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Supreme Court of the United States

OCTOBER TERM, 1943

No. 22

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JAMES P. WENBERRY, JR., ET AL.,  
APPELLANTS,

vs.

CARL E. SANDERS, ETC., ET AL.

---

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA

---

FILED OCTOBER 15, 1943

APPROPRIATE JURISDICTION NOTED JUNE 16, 1943

# SUPREME COURT OF THE UNITED STATES

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[fol. 1]

[File endorsement omitted]

**IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION.**

Civil Suit No. 7889

---

**JAMES P. WESBERRY, JR. and CANDLER CRIM, JR.,**

**VS.**

**S. ERNEST VANDIVER and BEN W. FORTSON, JR.**

---

To the Honorable Judges, District Court of the United  
States of America for the Northern District of Georgia,  
Atlanta Division:

COMPLAINT—Filed April 17, 1962


**I.**

The plaintiffs herein are James P. Wesberry, Jr. and Candler Crim, Jr., both residents of the County of Fulton, State of Georgia. The plaintiffs are citizens of the United States of America and of the State of Georgia. They are registered and qualified voters of said County and State, and as such, are entitled to vote for members of the House of Representatives of the Congress of the United States from the State of Georgia. The plaintiffs reside in the existing fifth Congressional Election District of Georgia, said district consisting of Fulton, DeKalb and Rockdale Counties.

[fol. 2]

**II.**

The plaintiffs herein bring this action in their behalf, in the behalf of all qualified voters of the fifth Congressional Election District, and in behalf of all of the qualified voters of the State of Georgia who are or may become similarly situated.



### III.

The following named defendants are citizens of the United States and State of Georgia and are residing within Georgia:

Defendant S. Ernest Vandiver, in his representative capacity as the duly elected, qualified and acting as the Governor of the State of Georgia, with his office and official residence in Atlanta, Georgia, and his successors in office; that as Governor he is charged with the duty of counting the votes, and immediately thereafter issue his proclamation declaring the person having the highest number of votes, and otherwise qualified, to be duly elected to represent the State in the House of Representatives of the United States as set forth in Georgia Code Section 34-2305.

Defendant Ben W. Fortson, Jr., in his representative capacity as duly elected, qualified and acting Secretary of this State with his office in Atlanta, Georgia, and his successors in office. The Secretary of State is charged with the responsibility of furnishing to the Ordinary of each County of this State the form of official ballot, all blank forms, including tally sheets, list of voters, forms of returns, certificates and directions to be used in the elections for representatives to the United States Congress, pursuant to Georgia Code Chapters 34-19 and 40-6. The Secretary of State also shall certify to the respective Ordinaries, the names of all candidates for representatives to said Congress.

### IV.

The court has jurisdiction of the parties hereto and of the subject matter of the complaint. As it will more fully appear from the facts hereinafter set forth, the plaintiffs herein have standing to complain and the subject matter of said complaint is not a non-justiciable issue.

[fol. 3]

### V.

The plaintiffs herein bring this civil action under the following Statutes:

(1) 42 U.S. Code Sections 1983 and 1988, which provide:

"Section 1983: Civil Action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizens of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity or other proper proceeding for redress."

"Section 1988. Proceedings in vindication of Civil Rights. The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of Title 18, for the protection of all persons in the United States in their Civil Rights, and for their vindication."

(2) 28 U.S. Code Section 1343 (3), which provides:

"Section 1343, Civil Rights.

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person; . . .

"(3) To redress the deprivation, under color of any state law, statute, ordinance, regulations, custom, or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

## VI.

This suit seeks interlocutory and permanent injunction to restrain the enforcement, operation and execution of certain laws of the State of Georgia, restraining officers thereof, namely, the Governor and the Secretary of State from complying with the provisions of such laws. Consequently, this case should be determined by a bench composed of three judges, as provided in 28 U.S. Code 2281 et seq. Furthermore, this action seeks relief under 28 U.S. Code 2201 et seq., providing for the declaration of rights



and other relations of any interested party seeking such declaration and for further necessary and proper relief based upon such declaratory judgment;

## VII.

The following Article of, and Amendment to, the Constitution of the United States are applicable in this action:

(1) Article 1, Section 2 provides:

"The House of Representatives shall be composed of members chosen every second year by the *People* of the several States. . . ." (Emphasis added.)

[fol. 4] (2) The Fourteenth Amendment, Section 1, provides that:

"No state shall make or enforce any law which shall *abridge* the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (Emphasis added.)

(3) The Fourteenth Amendment, Section 2, provides that:

"Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of a legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in *any way abridged*, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State." (Emphasis added.)

## VIII.

Georgia Code, Chapter 34-23, which provides for the election of members of Congress from Georgia, is as follows:

**"34-2301. Congressional districts.** The State is hereby divided into 10 congressional districts, in conformity with the Act of Congress of the United States approved June 18, 1929, decreasing the number of Congressmen from Georgia to 10, each of said districts being entitled to elect one Representative to the Congress of the United States. The districts shall be composed of the following *counties*, respectively:

**First District:** Bryan, Bulloch, Burke, Candler, Chatham, Effingham, Emanuel, Evans, Jenkins, Liberty, Long, McIntosh, Montgomery, Screven, Tattnall, Toombs, Truetlen, and Wheeler.

**Second District:** Baker, Brooks, Calhoun, Colquitt, Decatur, Dougherty, Early, Grady, Miller, Mitchell, Seminole, Tift, Thomas, and Worth.

**Third District:** Ben Hill, Chattahoochee, Clay, Crisp, Dodge, Dooly, Harris, Houston, Lee, Marion, Macon, Muscogee, Pulaski, Quitman, Randolph, Schley, Stewart, Sumter, Taylor, Peach, Terrell, Turner, Webster and Wilcox.

**Fourth District:** Butts, Carroll, Clayton, Coweta, Fayette, Herd, Henry, Lamar, Meriwether, Newton, Pike, Spalding, Talbot, Troup and Upson.

**Fifth District:** DeKalb, Fulton and Rockdale.

**Sixth District:** Baldwin, Bibb, Bleckley, Crawford, Glascock, Hancock, Jasper, Jefferson, Jones, Johnson, Laurens, Monroe, Putnam, Twiggs, Washington and Wilkinson.

**Seventh District:** Bartow, Catoosa, Chattooga, Cobb, Dade, Douglas, Floyd, Gordon, Haralson, Murray, Paulding, Polk, Walker and Whitfield.

***Eighth District:*** Atkinson, Appling, Bacon, Berrien, Brantley, Camden, Charlton, Clinch, Coffee, Cook, Echols, Glynn, Irwin, Jeff Davis, Lanier, Lowndes, Pierce, Telfair, Ware and Wayne.

[fol. 5] ***Ninth District:*** Banks, Barrow, Cherokee, Dawson, Fannin, Forsyth, Gilmer, Gwinnett, Habersham, Hall, Jackson, Lumpkin, Pickens, Pabun, Towns, Stephens, Union and White.

***Tenth District:*** Clarke, Columbia, Elbert, Greene, Hart, Lincoln, Madison, McDuffie, Morgan, Oconee, Oglethorpe, Richmond, Taliaferro, Walton, Warren, Wilkes and Franklin. (Acts 1911, p. 146; 1912, pp. 38, 41; 1912, p. 108; 1914, p. 27; 1914, p. 29; 1914, p. 33; 1916, p. 17; 1917, p. 41; 1917, p. 44; 1918, p. 102; 1918, p. 106; 1919, p. 68; 1920, p. 34; 1920, p. 38; 1920, p. 48; 1920, p. 52; 1921, p. 88; 1924, p. 88; 1924, p. 39; 1931, p. 46)

"34-2302. *Time of Election.* Members of the House of Representatives of the United States Congress shall be elected on Tuesday after the first Monday in November of each even numbered year. (Acts, 1872, p. 29)

"34-2303. *Governor must order election, when.* If an extra session of Congress shall be called after expiration of the congressional term, and before the next regular time for holding such elections, the Governor shall issue his proclamation ordering an election of such representatives for such extra session.

"34-2304. *Candidates must reside one year in district, to be eligible.* Besides the qualifications required by the Constitution of the United States, a residence of one year next preceding the day of election in the district for which the candidate offers, shall be necessary to make him eligible to election.

"34-2305. *Governor to count votes, etc.* Within 20 days after the election, the Governor shall count the votes, and immediately thereafter issue his proclamation, declaring the person having the highest number of votes, and otherwise qualified, to be duly elected to repre-

sent this State in the House of Representatives of the United States, and for what period. (Act 1799, Cobb, p. 234)

"34-2306. *In case of tie, new election ordered.* If two or more persons, equally qualified, shall have the same number of votes, the Governor shall issue his proclamation ordering a new election, within no less than 30 days. (Act 1799, Cobb, p. 234)

"34-2307. *Members-elect to apply for commissions within 30 days; vacancies.* If any person duly elected as aforesaid shall not, within 30 days after the Governor's proclamation, apply for his commission, the Governor shall order a new election, as prescribed in the preceding section; and vacancies for any cause shall be filled in like manner. (Act 1799, p. 234)"

## IX.

The population of the ten Congressional Election Districts of Georgia for the years 1950 and 1960, according to the United States Bureau of the Census, is as follows:

[fol. 6]

| Congressional District | 1960      | 1950      | Number of Increase from 1950 to 1960 | Percentage of Increase from 1950 to 1960 | Percentage of total population 1960 |
|------------------------|-----------|-----------|--------------------------------------|--|-------------------------------------|
| First                  | 379,933   | 350,052   | 29,881                               | 8.5%                                     | 9.6%                                |
| Second                 | 301,123   | 285,665   | 15,458                               | 5.4%                                     | 7.7%                                |
| Third                  | 422,198   | 383,148   | 39,050                               | 10.2%                                    | 10.7%                               |
| Fourth                 | 323,489   | 298,251   | 25,238                               | 8.5%                                     | 8.3%                                |
| Fifth                  | 823,680   | 618,431   | 205,249                              | 33.2%                                    | 20.9%                               |
| Sixth                  | 330,235   | 307,951   | 22,284                               | 7.2%                                     | 8.4%                                |
| Seventh                | 450,740   | 367,598   | 83,142                               | 22.6%                                    | 11.4%                               |
| Eighth                 | 291,185   | 267,014   | 24,171                               | 9.1%                                     | 7.4%                                |
| Ninth                  | 272,154   | 246,227   | 25,927                               | 10.5%                                    | 6.9%                                |
| Tenth                  | 348,379   | 320,241   | 28,138                               | 8.8%                                     | 8.7%                                |
| TOTAL                  | 3,943,116 | 3,444,578 | 498,538                              | 14.5%                                    | 100.0%                              |



## X.

Based upon the foregoing, the average population of the Congressional Election Districts of Georgia is 394,312. The most populous district of Georgia is the fifth district which has a population of 823,680, which is 207% greater, or almost one-half million more people, than the average district. In 1960 the fifth district had 20.9% of the total population of the state of Georgia and at the present rate of population growth, the fifth district will have approximately 25% of the total population in 1970. The least populous district of Georgia is the ninth district, which has a population of 272,154, or only 6.9% of the total population of Georgia. The fifth district has a population of more than 300% of the population of the ninth district, and at the present rate of population growth, the fifth district will have more than 350% of the population of the ninth district in 1970. The fifth Congressional district of Georgia, according to the 1960 census, was the sixth most populous in the United States. Today, the fifth district is the second most populous district in the United States. The average population per Congressional district throughout the United States is approximately 410,000, less than one-half the size of Georgia's fifth district.

[fol. 7]

## XI.

Plaintiffs assert that the classification of the Congressional districts as provided by Georgia Code section 34-2301, is arbitrary, capricious, and discriminatory. Said classification disfavors the plaintiffs and others similarly situated, placing them in a position of constitutionally unjustifiable inequality vis-a-vis voters in irrationally favored districts. The plaintiffs have been denied their right as citizens to vote free of any impairment or infringement by State action. Plaintiffs further assert that they have a plain, substantial, direct and adequate interest in maintaining the effectiveness of their votes. Neither the statute, that is Georgia Code section 34-2301, nor any legislative history reveal any standards upon which the ten Congressional seats, which have been allocated to the State of Georgia,

are to be apportioned among the people of this State. The law creating Georgia's ten Congressional Election Districts and dividing the various counties into a particular district was enacted in 1931 and has not been altered or amended since that time. The census figures for the years 1940, 1950 and 1960 have been revealed, yet there has been no adjustment of the representation of the people of Georgia in the House of Representatives since 1931, despite the subsequent drastic shifts of population. The statute does not provide for any adjustment at any time, based upon shifts of population or for any other reason. The boundaries are not reasonable or rational and are based upon representing land area or political subdivisions of the State rather than upon representing the people as required by the Constitution of the United States.

## XII.

The aforesaid Georgia Code section 34-2301 constitutes discrimination against these plaintiffs, individually and as a group, all without justifiable or reasonable basis. Said code section creates arbitrary and unconstitutional classifications among the voters of the State for the election of members of the House of Representatives, being based solely on geographical location of the voters.

[fol. 8]

## XIII.

Inasmuch as the plaintiffs herein live in the heavily populated fifth Congressional Election District, their vote is much less effective than the vote of those residing in the ninth district and other districts of Georgia. Through their representative to Congress, the voters in the ninth district have three times the political power of the voters of the fifth district. Conversely, the representative of the fifth district represents three times the number of people that the representative of the ninth district does. This unconstitutional disparity between these districts will continue in the future as the shift in population from rural to urban areas continues. Certain politicians have created an artificial barrier between the urban and rural voters, suggesting to these voters that they have opposing and divergent interests. To

day in Georgia, the legislature is controlled by rural areas, although voters residing in rural areas, as defined by the Bureau of Census constitute a minority of the population. This system of giving the minority the control of the legislature has failed both to protect rural citizens against continuing economic losses and declines and to meet the growing needs of urban citizens.

#### XIV.

To date, all attempts by the informed, civically and militant electorate and an aroused public to have the General Assembly to reapportion the Congressional Election Districts so as to more nearly equalize their population have been without success. A contributing, if not the, cause of this situation is the fact that the State legislature is chosen on the basis of State election subdivisions inequitably apportioned in a way similar to those of the Congressional districts. That the issues of State and Congressional apportionment are thus so interdependent and interrelated that it is to the interest of the State legislature to perpetuate the inequitable apportionment of both State and Congressional Election Districts. Consequently, there are no practical opportunities for the plaintiffs and the people of Georgia for exerting their political weight at the polls. Georgia has no initiative and referendum.

[fol. 9]

#### XV.

The reduction of the effectiveness of the plaintiffs' vote is the result of willful legislative discrimination against them. The statute sub judice has no standard for allocating the ten Congressional seats among the people of the State. If the legislature has any policy in this area, it is to maintain the status quo of invidious discrimination against the plaintiffs and those similarly situated at any cost. The gross and glaringly inequality of the voting power of the citizens of the various Congressional Election Districts irrefutably demonstrates a complete lack of effort by the legislature to seek an equitable apportionment.

## XVI.

The plaintiffs' rights, in particular, equal suffrage in equal and free elections, have been infringed as a result of State legislative action departing from a federal constitutional standard. While the Constitution of the United States contains no *express* provision requiring that Congressional Election Districts established by the States must contain approximately equal population, the constitutionally guaranteed right to have one's vote count clearly implies the policy that the State election systems, no matter what their form, should be designed to give approximately equal weight to each vote cast.

## XVII.

This reduction of the effectiveness of the plaintiffs' votes by the arbitrary, capricious and invidious discrimination and classification clearly violates the privileges and immunities clause of the Fourteenth Amendment to the Constitution of the United States in abridging their privileges as citizens of the United States and of the State of Georgia to vote for members of the House of Representatives from said State; a privilege guaranteed by Article I, Section 2 of the Constitution of the United States.

## XVIII.

Furthermore, this reduction of effectiveness of the plaintiffs' votes by the said arbitrary, capricious and invidious discrimination and classification on the part of the State amounts to a denial of the equal protection of the laws [fol. 10] guaranteed by the Fourteenth Amendment to the Constitution of the United States.

## XIX.

Plaintiffs further contend that Georgia Code section 34-2301 directly violates Article I, Section 2 of the Constitution of the United States, which guarantees that each citizen eligible to vote has a right to vote for the Congressmen representing the State of Georgia, and moreover, to have that vote fully counted. The right to have this vote



counted is abridged unless that vote is given approximate equal weight to that of other citizens of the State.

## XX.

By depriving the plaintiffs of their guaranteed right to vote and to have that vote counted effectively in the election of members of the House of Representatives of the United States, said plaintiffs are additionally deprived of due process of the law inasmuch as the House of Representatives, in conjunction with the Senate, enact laws affecting the life, liberty and property of all people, including these plaintiffs.

## XXI.

Plaintiffs' injuries are substantial and there are judicially acceptable, discoverable and manageable standards for remedying the said injuries. To remedy plaintiffs' injuries, however, it would not be necessary that the Court supervise any election or exercise any functions that are constitutionally reserved for the exercise by the legislative and executive branches of the government. The plaintiffs have been injured individually and as citizens of the United States and of the State of Georgia.

## XXII.

The plaintiffs attach hereto an exhibit, marked "Exhibit A", which is a proposed plan that has been submitted previously to the General Assembly providing for a more representative and equitable apportionment of the ten Congressional Election Districts of the State of Georgia. The plaintiffs do not necessarily endorse this plan but offer it as evidence that the problem of reapportionment of the Congressional Election Districts is not beyond practical possibilities. Under this plan, only two of the incumbent Congressmen from the State of Georgia would be required [fol. 11] to oppose each other. The plan would give the County of Fulton, which has a population of 556,326, a representative. The plan's feasibility and simplicity is further emphasized by the fact that it does not require splitting the counties into different districts.

## XXIII.

The provisions of Georgia Code section 34-2301 should be declared to be invalid and unenforceable, as violative of plaintiffs' aforesaid constitutional rights; and the General Assembly of the State of Georgia, that is, the State legislative body, should be authorized and directed to reapportion the Congressional Election Districts upon a more equitable and representative basis, with each district having approximately an equal number of people. Further, that this Court direct and authorize the General Assembly to apportion the Congressional Election Districts in such a manner as will not deny to the plaintiffs their constitutionally protected rights.

## XXIV.

This Court should enjoin the defendants, and the Ordinaries of the various counties within this State from holding any elections for Congressmen from the existing malapportioned Congressional Election Districts.

## XXV.

This Court should prevent by interlocutory and permanent injunction the performance by the defendants of their certain duties enumerated in paragraph three of this complaint. The rights of these plaintiffs and all other qualified voters of Georgia similarly situated can be protected only by a decree of this Court declaring the complained of statute (Georgia Code section 34-2301) to be unconstitutional and by enjoining the defendants from holding unconstitutional elections in November, 1962, or at any time thereafter.

## XXVI.

The next General Election for members of Congress is set for the first Tuesday in November, 1962, and therefore, sufficient and ample time exists for the General Assembly to meet in special session and for there to be enacted into law an equitable reapportionment of the Congressional Election Districts, which would comply and meet the con-

stitutional standards which the Courts have devised to [fol. 12] protect the rights of these plaintiffs. Indeed, the Governor of Georgia has called the General Assembly into a special session to consider a similar inequity, that is, malapportionment of representatives to the State legislature to be convened on April 16, 1962. It would be a simple, reasonable and appropriate procedure and measure for the Governor to amend his call in order to include the consideration of the Congressional malapportionment.

## XXVII.

Unless the General Assembly enacts legislation to provide for a more equitable and representative apportionment of the Congressional Election Districts prior to the elections set for the General Election, it is meet and proper that this Court order that the defendants exercise their respective duties and prepare for the elections of 1962 and hold the same in such a manner that the elections will be held at large over the State as a whole, whereby every qualified voter shall have the right to vote for every candidate for the House of Representatives of the United States Congress.

## XXVIII.

It is meet and proper that the Court mold a decree embodying and implementing the relief and remedies sought herein and whereby the constitutionally guaranteed rights of plaintiffs may be protected and carried into effect.

Wherefore, the plaintiffs herein respectfully pray that:

- (a) This Court take jurisdiction of this matter;
- (b) A special three judge Court be called to hear and determine this cause and declare the rights of the plaintiffs;
- (c) This Court hold and decree that the existing Congressional malapportionment of the State of Georgia has deprived and continues to deprive plaintiffs of liberty and property without due process of law;
- (d) This Court hold and decree that the existing Congressional malapportionment of the State of Georgia has

deprived and continues to deprive the plaintiffs of equal protection of the laws;

(e) This Court hold and decree that the existing Congressional malapportionment of the State of Georgia has deprived and continues to deprive plaintiffs of privileges guaranteed by the Fourteenth Amendment to the Constitution of the United States;

[fol. 13] (f) This Court hold, adjudge and decree that Georgia Code section 34-2301 to be void and invalid, as being contrary to the Fourteenth Amendment of the Constitution of the United States, Sections 1 and 2 and contrary to Article I, Section 2 of the Constitution of the United States;

(g) Defendant, S. Ernest Vandiver, in his representative capacity as Governor of this State and his successors in office and his representatives, be restrained from counting the votes in the elections for members to the House of Representatives of the Congress of the United States, and from issuing any proclamation or declaring any person as a member of said House;

(h) Defendant, Ben W. Fortson, Jr., in his representative capacity as Secretary of State be restrained from furnishing any forms for nominations and/or elections with respect to nominations or elections to membership in the House of Representatives of the United States Congress, and from furnishing any Ordinary or election manager or any one else the forms of the official ballot, tally sheets, list of voters, form of returns, certificates and directions to be used in elections for members of said House;

(i) Upon failure of the General Assembly to take action to reapportion the Congressional Election Districts upon an equitable and representative basis, to direct the defendants named herein to declare, prepare for and hold the election for members to the House of Representatives of the United States Congress on a State-at-Large basis and to direct them to take whatever further action as may be necessary or desirable to insure that all candidates for election to said House run at large throughout the State on a purely popular vote basis, and said manner and method



of election to continue until such time as the General Assembly enacts legislation, said legislation be enacted into law, reapportioning the Congressional Election Districts upon an equitable and representative basis, and which would provide protection of plaintiffs' constitutional rights;

(j) For such other and further relief as the Court may deem proper.

[fol. 14] This is the first application for any extraordinary process in this cause.

Scott, Scroggins & Cash, Frank T. Cash, Attorneys  
for Plaintiffs, 2301 The Bank of Georgia Bldg.,  
Atlanta 3, Georgia, JA 3-1926.

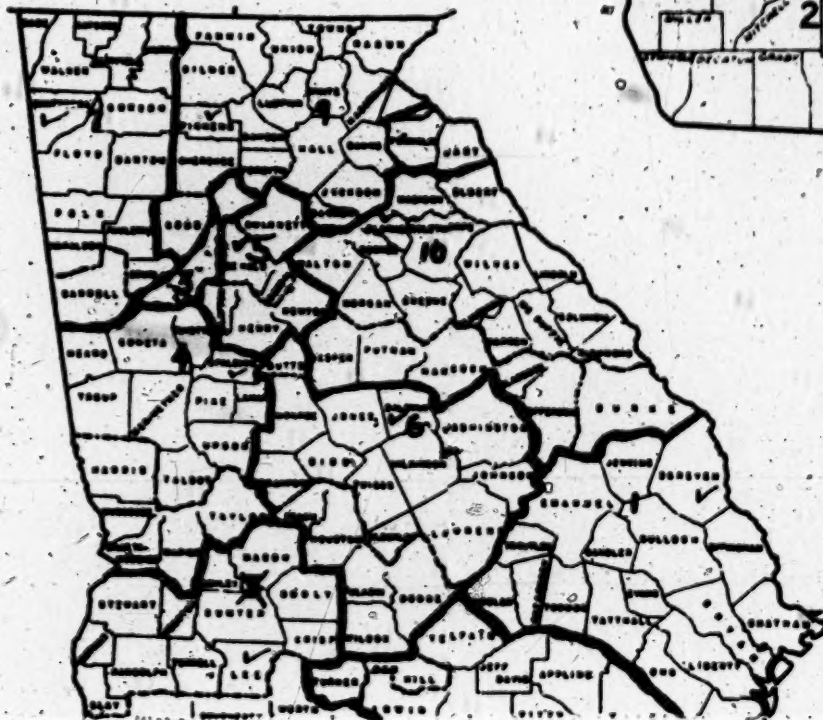
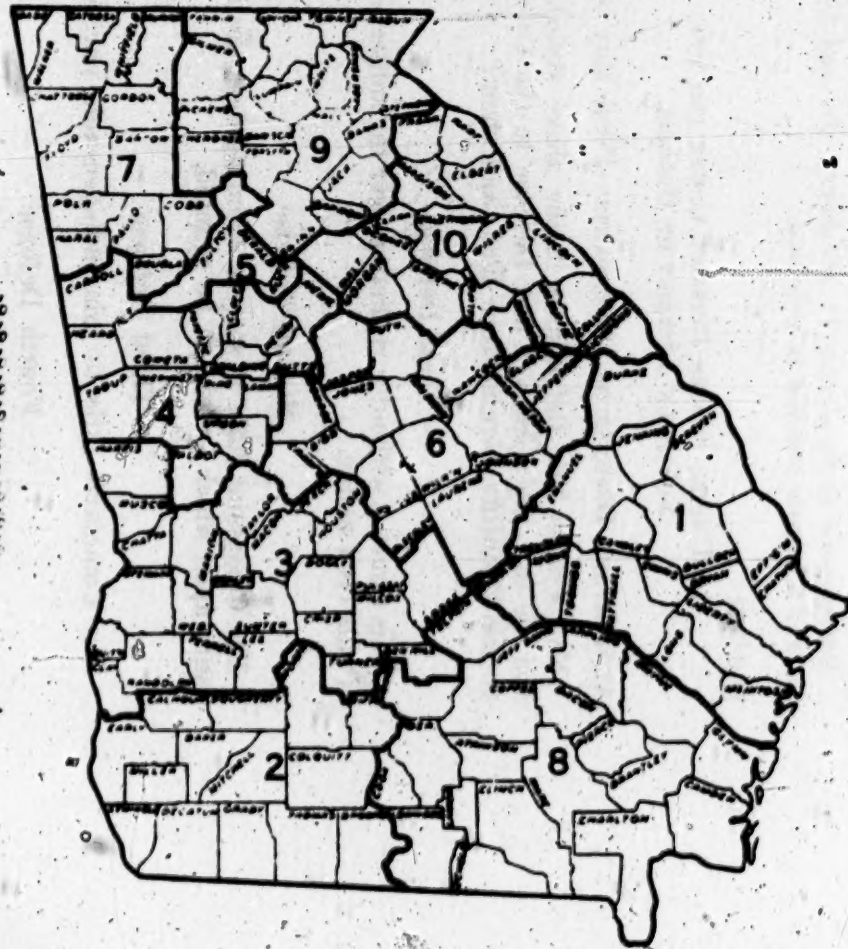
# UNITED STATES CONGRESSIONAL DISTRICTS

## Present District Populations:

|    |                   |
|----|-------------------|
| 1  | 379,900 or 9.64%  |
| 2  | 301,000 or 7.64%  |
| 3  | 422,100 or 10.71% |
| 4  | 300,400 or 8.20%  |
| 5  | 800,600 or 20.89% |
| 6  | 300,200 or 8.37%  |
| 7  | 400,710 or 11.43% |
| 8  | 200,100 or 7.38%  |
| 9  | 200,100 or 6.90%  |
| 10 | 300,300 or 8.84%  |

Largest (V) has 550,000 more people than smallest.

U. S. average people per Congressional District: 410,000.



## Proposed District Populations:

|    |                   |
|----|-------------------|
| 1  | 368,500 or 9.14%  |
| 2  | 365,300 or 9.10%  |
| 3  | 556,300 or 14.11% |
| 4  | 389,600 or 9.71%  |
| 5  | 395,800 or 9.99%  |
| 6  | 409,800 or 10.30% |
| 7  | 373,000 or 9.46%  |
| 8  | 368,700 or 8.56%  |
| 9  | 371,300 or 9.44%  |
| 10 | 384,400 or 9.70%  |

Goal: 10%, or 400,000 people, per district

# **Present District Populations:**

|    |                   |
|----|-------------------|
| 1  | 379,900 or 9.64%  |
| 2  | 301,000 or 7.64%  |
| 3  | 422,100 or 10.71% |
| 4  | 300,400 or 8.20%  |
| 5  | 300,600 or 20.89% |
| 6  | 300,200 or 8.37%  |
| 7  | 400,710 or 11.43% |
| 8  | 200,100 or 7.38%  |
| 9  | 200,100 or 6.90%  |
| 10 | 300,300 or 8.84%  |

Largest (V) has 550,000 more people than smallest.

U. S. average people per Congressional District: 410,000.



# **Proposed District Populations:**

|    |                   |
|----|-------------------|
| 1  | 368,500 or 9.14%  |
| 2  | 365,300 or 9.10%  |
| 3  | 556,300 or 14.11% |
| 4  | 389,600 or 9.71%  |
| 5  | 396,800 or 9.99%  |
| 6  | 409,800 or 10.30% |
| 7  | 373,000 or 9.46%  |
| 8  | 368,700 or 8.56%  |
| 9  | 371,300 or 9.44%  |
| 10 | 384,400 or 9.70%  |

Goal: 10%, or 400,000 people, per district

Largest: III—With 556,300 people

Smallest: VIII—With 368,700 people

[fol. 15]

EXHIBIT "A" TO COMPLAINT



[fol. 16]

*Duly sworn to by James P. Wesberry, Jr. and Candler  
Crim, Jr.; jurats omitted in printing.*

---

[fol. 20]

IN UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF GEORGIA

ANSWER AND DEFENSE OF DEFENDANTS—Filed May 9, 1962

Now Comes The Defendants in the above styled cause  
and file this their Answer and Defense to the Complaint  
of the Plaintiffs hereinbefore filed, and show:

First Defense

This Court is without jurisdiction over the subject matter  
of this civil action.

Second Defense

The Complaint fails to state a claim against the Defen-  
dants upon which relief can be granted.

Third Defense

The Complaint fails to join indispensable parties.

Fourth Defense

The Defendants answer the several Paragraphs of the  
Complaint as follows:

1.

Answering Paragraph I of the Complaint, the Defen-  
dants admit the allegation that the Fifth Congressional  
Election District of Georgia consists of Fulton, DeKalb  
and Rockdale Counties. For want of information sufficient  
to form a belief, the Defendants are unable either to admit  
or deny the other allegations contained in the said Para-  
graph.

[fol. 21]

2

Defendants deny the allegations contained in Paragraph  
II of the Complaint.



3.

Answering Paragraph III of the Complaint, the Defendants admit that their citizenship, residences and official positions as therein alleged are correct. Insofar as the said Paragraph alleges that the Defendants have certain duties and responsibilities, the Defendants say that their duties as public officers are defined by law, of which this Court can take judicial notice.

4.

Defendants deny the allegations contained in Paragraph IV of the Complaint.

5.

Defendants deny the allegations contained in Paragraph V of the Complaint that the Plaintiffs have any right to bring this civil action under 28 USC, Section 1343(3) and 42 USC, Sections 1983 and 1988.

6.

Paragraph VI of the Complaint alleges matters of law requiring no answer.

7.

Defendants deny the allegations contained in Paragraph VII of the Complaint that Section II of Article I of, and the Fourteenth Amendment to, the Constitution of the United States are applicable in this civil action.

8.

Paragraph VIII of the Complaint alleges matters of law requiring no answer.

9.

Paragraph IX of the Complaint alleges matters within the judicial knowledge of the Court and requires no answer.

[fol. 22]

10.

For want of sufficient information to form a belief, the Defendants are unable either to admit or deny the accuracy of the figures and computations alleged in Paragraph X of the Complaint. Otherwise, the allegations of the said Paragraph are denied.

11.

Defendants deny the allegations contained in Paragraphs XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII and XXVIII of the Complaint.

Wherefore, the Defendants pray that the prayers of the Complaint be denied and that the Complaint be dismissed.

Eugene Cook, The Attorney General, Paul Rodgers,  
Assistant Attorney General, Donald E. Payton,  
Assistant Attorney General.

[fol. 23] *Duly sworn to by Ben. W. Fortson, Jr., jurat omitted in printing.*

Certificate of service (omitted in printing).

[fol. 24] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

Civil Action Number 7889

JAMES P. WESBERRY, JR., and  
CANDLER CRIM, JR., Plaintiffs,

vs.

S. ERNEST VANDIVER and  
BEN W. FORTSON, JR., Defendants.

Transcript of Proceedings—May 23, 1962

Before: Judge Elbert P. Tuttle, Judge Griffin B. Bell, and  
Judge Lewis R. Morgan.

APPEARANCES:

For the Plaintiffs: Mr. Frank T. Cash, Mr. Frank W.  
Scroggins.

For the Defendants: Mr. Eugene Cook, Mr. Paul  
Rodgers.

[fol. 34] JAMES PICKETT WESBERRY, JR. Called as a wit-  
ness on behalf of the Plaintiffs, after having first been duly  
sworn, testified as follows:

Direct examination.

By Mr. Cash:

Q. Will you tell the Court your name, please?

A. James Pickett Wesberry, Junior.

Q. Where do you reside, Mr. Wesberry?

A. 1876 Windermere Drive, N. E., Atlanta, Georgia.

Q. What county is that in?

A. Fulton County.

Q. What is your occupation?

A. Certified Public Accountant.

Q. Are you a registered voter?

A. I am.

Q. Do you plan to vote in the Democratic Primary in September?

A. I do.

[fol. 35] Q. Do you plan to vote for the—for the candidate for the House of Representatives to the United States Congress?

A. I do.

Q. Are you a tax payer?

A. I am.

Q. Are you a resident of the Fifth Congressional District?

A. I am.

Mr. Cash: Your witness.

Mr. Rodgers: We have no questions, Your Honor.

Judge Tuttle: You may go down.

Mr. Rodgers: I might add, we will state in advance we will stipulate they are qualified voters and residents of Fulton County.

Judge Tuttle: All right.

Mr. Cash: I would like to call Mr. Candler Crim to the stand, please.

Judge Tuttle: I understand the State has now conceded that they are residents, tax payers, whatever you alleged in your first complaint as to the qualifications.

Mr. Cook: We have stipulated—

Judge Tuttle: The jurisdictional factors?

Mr. Cook: That's correct, not beyond that, may it please the Court.

[fol. 36] Judge Tuttle: You can still have Mr. Crim testify if you want.

Mr. Cash: Not unless the Court desires.

Judge Tuttle: We don't care.

Mr. Cash: The Plaintiffs call to the stand Mr. James Mackay.



JAMES A. MACKAY Called as a witness on behalf of the Plaintiffs, after having first been duly sworn, testified as follows:

Direct examination.

By Mr. Cash:

Q. Please state your name?

A. James A. Mackay.

Q. Where do you reside, Mr. Mackay?

A. 1032 Clifton Road, N. E., Atlanta 7, DeKalb County, Georgia.

Q. What is your occupation?

A. Attorney.

Q. Do you hold a public office, Mr. Mackay?

A. I am a member of the State House of Representatives of the General Assembly of Georgia from DeKalb County.

Q. How long have you held such a position?

A. I have been elected five times to that office. I am [fol. 37]. serving my fourth consecutive term.

Q. And that is a total number of how many years?

A. Ten years.

Q. Ten years? Mr. Mackay, you are aware, of course, the reason for the—excuse me. I will re-phrase the question. Were you aware of the creation of a committee to consider the reapportionment of the Congressional Districts for the State of Georgia?

A. I was one of the authors of House Resolution 296, if that is the one that you refer to.

Judge Tuttle: What session was that in?

The Witness: 1961 session.

By Mr. Cash:

Q. What was the general purpose of this committee, Mr. Mackay?

A. Well, I would like to state that our DeKalb delegation authorized a separate resolution specifically to study the need for Congressional reapportionment.

# OBJECTIONS TO TESTIMONY AND COURT'S RULINGS

Mr. Cook: Now, Your Honor, I will have to object to this at this point, this line of testimony. If Counsel for Plaintiff will state to the Court, so that I may understand the purpose of this line of testimony, I think perhaps I might not have to object too many times, but in view of the fact that he has begun on the line of testimony which is objectionable to us, on the ground that it is immaterial [fol. 38] in this case and irrelevant, contributes nothing, since it is the testimony relating to a committee of some kind, about which I know nothing about, might have done, I would have to object at this point.

The Witness: May I explain my answer, Your Honor?

Judge Tuttle: Well, I think it would be more appropriate for Counsel to state the purpose of the examination.

Mr. Cash: Your Honor, it is the contention of the Plaintiffs, as we alleged in our petition, that the Legislature had willfully failed to act in reapportioning the District, in an effort to show to the Court that some effort was done—made by members of the General Assembly.

Judge Tuttle: From this Congressional District?

Mr. Cash: From this Congressional District, the Congressional District as we allege has been disenfranchised.

Judge Tuttle: Some effort to do what?

Mr. Cash: Pardon?

Judge Tuttle: Some effort been made to do what?

Mr. Cash: To reapportion the House on a more equitable basis—excuse me, the apportionment of the Congressional [fol. 39] Seat on a more equitable basis.

Judge Tuttle: You propose to show by this witness the effort that he took as a member of the General Assembly to accomplish this purpose in addition to whatever bills he personally may have introduced?

Mr. Cash: In addition—yes, sir.

Mr. Cook: I object on the same grounds; it's irrelevant, immaterial to this cause. That is the act of hearsay evidence, and it is evidence that points up the effort on the part of one or two or three or more persons to do something over which no one has the jurisdiction to do in this manner, except the Congress of the United States and the

Legislature of Georgia. I object to it as being irrelevant and immaterial.

Judge Tuttle: It appears to me, Mr. Cook, that since Mr. Mackay is a member of the House of Representatives from a county that is in this Congressional District as to which the Plaintiffs alleged a large disparity, that what this member of the Legislature may have done preliminary to the introduction of the bill, if one was introduced, may be relevant, and I would suggest we hear the evidence. We will take your objection to it under consideration, because really until we hear the evidence I don't believe I would be [fol. 40] able to decide myself whether I think it is relevant or not, so we will take the objection subject—we will take the evidence subject to the objection.

The Witness: Your Honor, I can state it very briefly. We—the DeKalb delegation introduced a resolution calling for the creation of a study committee to study the 1960 population figures.

Judge Tuttle: Now, that resolution is a formal numbered resolution?

The Witness: That is a numbered resolution in the House. When House Resolution 145 was passed out of the House and killed in the Senate, Mr. Twitty agreed that we could consolidate our resolution and a House Resolution to call for the study of the need for Legislative and Congressional reapportionment, and this is House Resolution 296 which was passed by the House. That is all I wanted to say about that. But I wanted to make the point that we have made an effort to get this bill passed.

Judge Tuttle: I know how hard it is for a lawyer to be an impartial witness, Mr. Mackay. What you wanted to do isn't really relevant. You are merely answering questions from the lawyer who put you on the stand. Let's see what he wanted you to say, please. Let's see what questions he wants you to answer.

[fol. 41] By Mr. Cash:

Q. Mr. Mackay, would you briefly summarize your activities as a member of the General Assembly to bring about a more equitable reapportionment of the Ten Congressional Districts.

A. Well, the Court is familiar with my testimony of the other day.

Mr. Cook: May it please the Court, I shan't be objecting—

Judge Tuttle: I think that question is objectionable. I think Mr. Mackay's testimony, thus far, may be relevant, and therefore we will let it stand subject to your objection.

Mr. Cash: Your Honor, may I elaborate?

Judge Tuttle: Yes, sir.

Mr. Cash: I feel as a member of the Legislature, other things than introducing resolutions are part of his duties. I believe it is my contention that a Legislator has the duty to create the proper atmosphere for the submission of bills at a proper time. Now, the Court may disagree with that, but that is my contention, that Mr. Mackay may have done other activities within the House other than introducing bills themselves that would have led up to a resolution, and I think that is immaterial.

Judge Tuttle: We have had a similar question in this [fol. 42] other litigation, and we did permit witnesses to testify as to representation made by the witness, a member of the Legislature, to committees—to committees of the House of Representatives, but we did not permit testimony of their general activities other than those activities in the House of Representatives. So this particular general question, I think, is too general that you have asked thus far.

Mr. Cash: Your Honor, in Plaintiffs' Exhibit 10, which is Report of House Reapportionment Study Commission, which was created by House Resolution 296, and House Resolution 296—I will read therefrom.

Judge Tuttle: What is the document?

Mr. Cash: This is House Resolution 296. It was adopted by the House of Representatives on March 6th, 1961.

Judge Tuttle: Now, you propose to introduce that, do you, later?

Mr. Cash: Yes, I do.

Mr. Cook: We have stipulated it.

Judge Tuttle: You may read it or call our attention to it.

Mr. Cash: It says: "Whereas in the State of Georgia there has been, within the last three years, a shift in the



population among the various counties of this State, and, [fol. 43] there is today a demand on the part of some areas for a reappraisal and revision of the present allotment in the Congress and in the General Assembly and others," and among other things the House Resolution No. 296 authorized this House Apportionment Study Commission to consider the question of Congressional reapportionment.

Now, Mr. Mackay has testified he, I believe he testified that he appeared before this committee, and—

Judge Tuttle: Not yet, I don't think.

By Mr. Cash:

Q. Mr. Mackay, I hand you Plaintiffs' Exhibit No. 13.

A. This is a memorandum submitted by the DeKalb County Legislative Delegation to the Commission appointed pursuant to House Resolution 296 to study the advisability of reapportioning representation in the Congress and in the General Assembly, and to report to the 1962 General Assembly. I was the author of this brief and argument after consultation with the other members of my delegation. I did not present it personally. It was presented personally by Senator W. Hugh McWhorter of our Senatorial District, but this was filed officially with the Twitty Committee.

Judge Tuttle: Mr. Cash, we are really trying to simplify your case. Judge Morgan and I feel quite strongly that these actions really speak for themselves, and it makes [fol. 44] little difference what an individual member of the Legislature thought or intended to do. We feel quite strongly that your case will depend pretty largely on a question of law as to whether the disparity is so great as to warrant action.

Mr. Cash: One further thing, Your Honor, in reference to this particular report. The findings and conclusions of this committee, recommendations by the committee, the Commission makes the following recommendations: "No. 1, we do not recommend any changes in the Congressional District of Georgia at this time." And what we'd like to show is that there was some evidence before the committee requesting that the—that the present system was unfair

and disproportionate in representation, and we feel that this report alone would not indicate that. We feel that we needed some evidence to substantiate that there was some desire on behalf of some people who appeared before this committee, the fact that a Congressional District—present Congressional Districting was unfair and we conclude unconstitutional.

Judge Tuttle: I would suggest that you tender those documents that represent these different resolutions, and if in connection with any of these resolutions you need a witness' testimony, of course you may proceed with that, but [fol. 45] so that we will have them before us in an orderly—do you have them numbered already by the clerk?

#### OFFERS IN EVIDENCE

Mr. Cash: I have them, and I introduce into evidence Plaintiffs' Exhibit No. 10 and Plaintiffs' Exhibit No. 13.

Judge Tuttle: Those are agreed to be—10 and 13 are agreed to?

Mr. Cook: My inquiry of 13, I think there may be some question. We make—we submit it was not stipulated, 13, on the ground that it reflects nothing less than the opinion on the part of the committee itself—I mean, the witness, Mr. Mackay, and does not in itself reflect any opinion on the part of the Legislature as such. Therefore, it is objectionable as being immaterial.

Judge Tuttle: Now, this is the document just testified to that Mr. Mackay has presented to the committee?

The Witness: The delegation, the DeKalb Delegation and the State—the House and Senate, it represents the judgment of the four of us, and presents our reasoning as to why we feel this is a discriminatory situation in terms of our constituents' position in Congressional reapportionment, and I think these arguments—I would like an opportunity [fol. 46] to state why we feel that they are discriminatory.

Judge Morgan: These were arguments that were submitted to the committee?

The Witness: Our delegation, yes, sir.

Judge Tuttle: Well, again, we can't read it without delaying the trial too much. We will take this tender and admit it in evidence subject to objection, and rule on whether it is admissible or not. My tentative feeling is—I don't know whether either Judge Bell or Judge Morgan agree with me—any formal presentation made by the members of the House of Representatives to a committee created by the House of Representatives for a study of this purpose is admissible for whatever purpose it may have, but we are not passing on the admissibility finally until we have a chance to look at it. So this No. 13 is admitted subject to the objection of the Defendant, and 10 is admitted by stipulation.

(Whereupon Plaintiffs' Exhibit No. 10 and Plaintiffs' Exhibit No. 13 were admitted into evidence.)

Judge Tuttle: Just a second.

The Clerk: Plaintiffs' Exhibit 10 is a certified copy of the Assistant Clerk, House of Representatives, relative to House Resolution 296, and report of House reapportionment study commission and filed in Clerk's Office and distributed to members of General Assembly.

(Whereupon above document was marked for identification only as Plaintiffs' Exhibit No. 10.)

The Clerk: Plaintiffs' Exhibit No. 13 is a memorandum submitted by the DeKalb County Legislative Delegation to the Commission appointed pursuant to House Resolution 296, and so forth.

(Whereupon above document was marked for identification only as Plaintiffs' Exhibit No. 13.)

The Witness: Your Honor, I had not completed my answer.

Mr. Cook: No objection to that.

The Witness: May I complete my answer?

Judge Tuttle: I don't know what the question was.

The Witness: The question was what action we had made officially as members of the Legislature to get relief from the Legislature.

Judge Tuttle: Yes, you may proceed, subject to whatever objection Counsel may make. I don't know what the answer will be.

The Witness: I simply wish to state that when the Committee reported to the 1962 General Assembly and said that [fol. 48] it would not deal with the problem it was assigned to deal with, which among other things was Congressional reapportionment, I prepared a letter addressed—which I personally mailed to every member of the General Assembly asking that they take action in this area. This letter has not been introduced in evidence, but I wanted to report that that was done.

Judge Tuttle: Is such—is there a copy of that letter here?

Mr. Cash: Yes, Your Honor.

The Witness: It has not been identified, but I do identify it. It deals with both subjects.

Mr. Cash: Will you mark that Exhibit No. 14?

The Clerk: Plaintiffs' Exhibit No. 14 for identification, letter from James A. Mackay to members of the General Assembly, 10-10-61.

(Whereupon above document was marked for identification only as Plaintiffs' Exhibit No. 14.)

Mr. Cash: Your Honor, the Plaintiffs at this time would like to submit into evidence Plaintiffs' Exhibit No. 14.

Judge Tuttle: Is there objections?

Mr. Cook: No.

Judge Tuttle: Admitted without objection.

Mr. Cook: Wait a minute. I believe as to the other—I [fol. 49] believe—I'm sorry, Your Honor, but we do object for the same reason that we objected to No. 13, Plaintiffs' Exhibit No. 13 there.

Judge Tuttle: Well, that will be received subject to objection.

(Whereupon Plaintiffs' Exhibit No. 14 was admitted into evidence.)



By Mr. Cash:

Q. Mr. Mackay, were any other activities conducted by your delegation?

A. No, because the only—

Judge Tuttle: Now, if there were none, please don't answer why you didn't, Mr. Mackay. I don't believe that would be admissible.

Mr. Cash: Your witness.

Mr. Cook: No questions.

Judge Tuttle: Thank you, Mr. Mackay. You may be excused.

The Witness: Thank you.

Mr. Cash: Your Honor, I'd like to—the Plaintiffs would like to introduce now into evidence Plaintiffs' Exhibit No. 12, which is a certified copy under the seal of the Secretary of State, a true and correct copy of House Bill No. 610, [fol. 50] that was read for the first time in the House of Representatives on February 15, 1951, which was introduced by Representative Luther Alverson, providing for Congressional redistricting.

Judge Tuttle: Has that been stipulated?

Mr. Rodgers: Your Honor, we stipulated all of these exhibits. That is the one you showed me previously, isn't it?

Mr. Cash: We are just now introducing it into evidence.

Judge Tuttle: It may be received without objection.

(Whereupon Plaintiffs' Exhibit No. 12 was admitted into evidence.)

Mr. Cash: Please identify that as Exhibit No. 9.

The Clerk: Exhibit No. 9 is a map of the State of Georgia.

Mr. Cash: Indicating Congressional Districts.

The Clerk: Indicating Congressional Districts.

(Whereupon above document was marked for identification only as Plaintiffs' Exhibit No. 9.)

Mr. Cash: The Plaintiffs would like at this time to introduce into evidence Plaintiffs' Exhibit No. 9.

[fol. 51] Judge Tuttle: That one has been stipulated to, hasn't it?

Mr. Cash: Yes.

Judge Tuttle: It may be received without objection.

(Whereupon Plaintiffs' Exhibit No. 9 was admitted into evidence.)

Mr. Cash: The Plaintiffs call as their next witness Mrs. Virginia Stringer.

MRS. VIRGINIA STRINGER Called as a witness on behalf of the Plaintiffs, after having first been duly sworn, testified as follows:

Direct examination.

By Mr. Cash:

Q. What is your name, please?

A. Mrs. Virginia Stringer.

Q. Where do you reside?

A. 3403 Chestnut Drive, Doraville, Georgia.

Q. What county is that in?

A. DeKalb.

Q. Are you a member of any Civic organization?

A. Yes, sir. I am a member of the League of Women Voters.

Q. Which one?

A. Well, if you are a member of any League you are a [fol. 52] member of the League of the United States, and automatically a member of the League of Women Voters of Georgia and the League of Women Voters of DeKalb County.

Mr. Cook: I object to that remark on the ground it's wholly immaterial. This is not a jury trial, but just to say somebody is a member of that League is irrelevant. I understand we are not before a jury, but I think I owe it to my client.

Judge Tuttle: I think she said that any member of the League of Women Voters is automatically a member of the

United States League of Women Voters and the State and County League of Women Voters.

Mr. Cook: I misunderstood.

By Mr. Cash:

Q. Specifically, Mrs. Stringer, which are you a member of?

A. The League of Women Voters of DeKalb County.

Q. And what is your position in that organization?

A. I am First Vice President and Chairman of the Reapportionment Committee.

Q. What is the purpose of this organization?

A. To promote an interest of the citizens in better government.

Q. You mentioned that you were Chairman of the Reapportionment study committee.

A. For DeKalb County.

Q. For DeKalb County? What effort have you done in [fol. 53] that capacity?

A. Well, may I qualify, being Chairman of the Reapportionment Committee of DeKalb County, Reapportionment Committee of DeKalb County is a State item on the program of the League of Women Voters of Georgia.

Q. And you are a member of that Committee also?

A. I am a member of that Committee also.

Judge Tuttle: Mr. Cash, if you will restrict the inquiry as to what activities she may have participated in that capacity in dealing with the Legislature of the State of Georgia, what she has done outside of dealing with the Committees or the Legislature itself, we think, would not be relevant.

Mr. Cash: What I had in mind, Your Honor, it was just that—what activities had she done as far as getting the question of Congressional Reapportionment—

Judge Tuttle: You may ask her about that.

By Mr. Cash:

Q. What activities has your organization done in reference to getting before the members of the General Assembly and public generally—

Judge Tuttle: Just a minute. Just before the General Assembly.

By Mr. Cash:

Q. Before the members of the General Assembly?  
[fol. 54] A. Our first action was in August of 1961 when we mailed copies of a suggestive re-districting for Congressional Districts to members of the House Legislative Re-apportionment Study Committee of the Twitty Committee. Then a couple of months later we held—in October we held a press conference at which we invited the members of the Committee. Only one of them was able to come, and we presented them at that time with mapped plans, showing that Congressional re-districting could be done. In December of '61, we sent them a letter calling their attention to the fact of the need for Congressional re-districting.

Judge Tuttle: This letter went to the members of the General Assembly?

The Witness: All members of the General Assembly, and then in April of 1962, just prior to the special session of the Legislature, we furnished them with a new plan that we had worked up for re-districting the Congressional Districts.

Mr. Cash: Your witness.

Mr. Cook: No questions.

Mr. Cash: Come down.

Judge Tuttle: Thank you.

Mr. Cash: At this time, Your Honor, I would introduce my associate in this case, Mr. Frank W. Scroggins.

Mr. Scroggins: Thank you.

Mr. Cash: The plaintiffs call to the stand Mr. Harry Adley. Would you please administer the oath?

Judge Tuttle: Yes, Mr. Adley wasn't here when the other witnesses were sworn.

The Clerk: Raise your right hand.

(Whereupon Mr. Harry Adley was placed under oath by the clerk.)



HARRY C. ADLEY, called as a witness on behalf of the Plaintiffs, after having first been duly sworn, testified as follows:

Direct examination.

By Mr. Cash:

Q. State your name, please.

A. Harry C. Adley.

Q. Where do you reside?

A. 81 Peachtree Place, Northeast, Atlanta, Georgia.

Q. What county is that?

A. Fulton County.

Q. What is your occupation?

A. I am a City Training and Urban Renewal Consultant.

[fol. 56] Q. Are you a member of any Civic organization?

A. I am Vice President of the Active Voters of Georgia.

Q. Has the Active Voters of Georgia taken any—made any effort in behalf of getting before the General Assembly of Georgia any recommendations considering reapportioning—re-districting of Congressional Districts.

A. We have made specific recommendations to the General Assembly in three forms. It is our practice every year to send in the month of December a letter to each Legislator in the General Assembly setting forth our views on matters of good government at the State level. For the previous two years we have made strong recommendation that the Congressional District be re-worked, and we thought so as to reduce the disparity. We have also made representation in person before the House Committee known as the Twitty Committee, and then for the past year we have also made recommendation to the DeKalb and Fulton delegations at their pre-legislative forums for the same purpose.

Q. That's been the extent of your activities?

A. They have been the three specific interest, yes.

Mr. Cash: Your witness.

Mr. Cook: No questions.

Judge Tuttle: Thank you, Mr. Adley.

[fol. 123]

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

Civil Action No. 7889

JAMES P. WESBERRY, JR., and  
CANDLER CRIM, JR., Plaintiffs,

v.

S. ERNEST VANDIVER, as Governor of the  
State of Georgia and  
BEN W. FORTSON, JR., as Secretary of the  
State of Georgia, Defendants.

Before Tuttle and Bell, Circuit Judges and Morgan, Dis-  
trict Judge.

OPINION—June 20, 1962

Circuit Judge Bell:

This is the third in a series of suits filed in this court immediately following the decision of the Supreme Court in *Baker v. Carr*, 1962, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed. 2d 663. In *Sanders v. Gray*, N.D.Ga., 1962, 203 F.Supp. 158,<sup>1</sup> we struck down the Georgia County Unit System of primary elections in the form in which it then existed because of resulting invidious discrimination to the plaintiffs who were residents of Fulton County. Then in *Toombs v. Fortson*, Civil Action No. 7883, N.D.Ga., 1962, — F.Supp. —, again on the basis of resulting invidious discrimina- [fol. 124] tion, we found the General Assembly of Georgia to be malapportioned and required apportionment of at least one body of the Assembly according to population. In that case, and for the same reason, we struck down the statute requiring the election of senators on a rotation basis

<sup>1</sup> Now pending on appeal in the Supreme Court.

among the counties in each senatorial district. We withheld injunctive and other relief pending action on the part of the responsible state officials, executive and legislative, before the 1963 session of the General Assembly appropriate to ending the proscribed discrimination. Our action in each of these cases was premised on the denial to plaintiffs of equal protection of the laws under the Fourteenth Amendment to the Constitution.

Plaintiffs here are residents and qualified voters of Fulton County, Georgia, and as such are entitled to vote in the primary and general elections for members of the House of Representatives of the Congress of the United States from the Fifth Congressional District of Georgia. They likewise premise their cause on the Fourteenth Amendment, seeking the invalidation of the Georgia statute which sets up the districts for the election of the ten members of the House from Georgia and which provides the method of election. Georgia Code, Section 34-2301. They contend also that this statute is void as being contrary to Art. I, Section 2 of the Constitution of the United States which provides that members of the House of Representatives shall be elected by the people.<sup>2</sup>

Jurisdiction and three-judge status are based on Title 28, USCA, Sections 1343, 2201-2202, 2281, 2284 and 42 USCA, Sections 1983 and 1988: Injunctive relief is sought [fol. 125] against the defendants, the Governor and Secretary of State of Georgia, to the end that no elections may be held except on a state-at-large basis pending redistricting on "an equitable and representative" basis.

Georgia was awarded two members in the House of Representatives of the Congress under the Act of April 14, 1792 which apportioned representatives among the several states: 1 Stat. 253 (1792). The number of representatives allocated to Georgia increased gradually, based on population, from two to nine under the census of 1830. 2 Stat. 669 (1811); 3 Stat. 651 (1822); 4 Stat. 516 (1832). And elections in some states were on a district basis but in Georgia and in some of the other states they were on a

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<sup>2</sup> "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, . . ."

state-at-large basis for nearly fifty years. Congress, in 1842, provided that representatives, where a state was entitled to more than one representative, should be elected from districts composed of contiguous territory, equal in number to the number of representatives to which a state might be entitled with no one district electing more than one representative. 5 Stat. 491 (1842). Georgia set up the district system in 1843 based on the 1840 census and has adhered to it at all times since then, including the election of members to the Congress of the Confederate States of America during the period of secession. Ga. Code, 1861, p. 12.

Districts were not required by the Apportionment Act of 1852, 9 Stat. 433 (1852), but were again required in 1862. 12 Stat. 572 (1862). In 1872 another element was added to the system. Not only must each district be of contiguous territory but also of an equal number of inhabitants as nearly as practicable. 17 Stat. 28 (1872). Under [fol. 126] this Act Georgia was allocated nine representatives. Congress continued this system in 1882 and 1891 and the number of representatives from Georgia was increased to ten in 1882 and eleven under the 1891 Act. 22 Stat. 5 (1882); 26 Stat. 735 (1891). In 1901 Congress added the requirement that the districts be compact, 31 Stat. 733 (1901), and the 1911 Apportionment Act provided that:

"Representatives to the Sixty-third and each subsequent Congress shall be elected by districts composed of a contiguous and compact territory and containing as nearly as practicable an equal number of inhabitants." 37 Stat. 13, 14 (1911).

There was no reapportionment after the census of 1920 and from 1910 to 1930 Georgia had twelve seats in the House. The Reapportionment Act of 1929, 46 Stat. 13, 26 (1929), provided that the House be reapportioned after each decennial census but failed to re-enact the requirements of compactness, contiguity, and equality of population in each district. 46 Stat. 13 (1929), Title 2, USCA, Section 2.

Under the Act Georgia lost two seats in the House and the statute here under attack followed in 1931. Ga. Laws,



1931, p. 46; Code Section 34-2301, et seq. The General Assembly divided the state into ten congressional districts on the basis of allocating the several counties to the respective districts, and there have been no changes in the allocations to date.

The facts are not in dispute and are ample for final decision on the merits. The following table shows the population of each congressional district in 1930 as compared with 1960:

[fol. 127]

| District | Population, 1930 | Population, 1960 |
|----------|------------------|------------------|
| First    | 328,214          | 379,933          |
| Second   | 263,606          | 301,123          |
| Third    | 339,870          | 422,198          |
| Fourth   | 261,234          | 323,489          |
| Fifth    | 396,112          | 823,680          |
| Sixth    | 281,437          | 330,235          |
| Seventh  | 271,680          | 450,470          |
| Eighth   | 241,847          | 291,185          |
| Ninth    | 218,496          | 272,154          |
| Tenth    | 289,267          | 348,379          |

The burden of the complaint is the disproportionate population of the Fifth Congressional District as compared with the other districts. It is comprised of Fulton, DeKalb, and Rockdale Counties. The growth of Fulton and DeKalb Counties has been spectacular in recent years with the population of DeKalb increasing from 70,278 in 1930 to 256,782 in 1960, and that of Fulton from 318,587 to 556,326. It is to be noted that the population of each of the ten congressional districts has increased from a low of slightly under fifteen per cent in the Second District to just over one hundred eight per cent in the Fifth District.

It is the position of plaintiffs that the population of each district should be within a range of ten to fifteen per cent of the average district population based on a division of the number of districts into the total population of the

state.<sup>3</sup> The population of Georgia according to the 1960 census was 3,942,936. For our purposes,<sup>4</sup> we will take 394,000 under the theory of plaintiffs as an average and examine [fol. 128] the facts using the suggested variance of fifteen per cent. Under this theory no district should have a population of more than 453,000 nor less than 335,000. Applying the same theory to the districts as constituted in 1931 when the population of Georgia under the 1930 census was 2,908,506, an approximate average per district of 291,000, no district should have had a population of more than 335,000 nor less than 247,000.

The aforesaid table demonstrates that only the Fifth and Ninth Districts substantially varied from the fifteen per cent standard suggested by plaintiffs on the 1930 basis. The Second, Eighth, and Ninth Districts fell substantially more than fifteen per cent short of the average according to the 1960 census while the Fifth dramatically exceeded the variance.

We hasten to add that we neither expressly nor impliedly adopt any mathematical standard. We know of no basis for an exact standard. Cf. *Sanders v. Gray*, supra, where sufficient basis existed. We use plaintiffs' suggested standard here in amplification of their contentions.

It is clear by any standard however that the population of the Fifth District is grossly out of balance with that of the other nine congressional districts of Georgia and in fact, so much so that the removal of DeKalb and Rockdale Counties from the District, leaving only Fulton with a population of 556,326, would leave it exceeding the average by slightly more than forty per cent. It is apparent that giving effect to any reasonable population based standard will require the division of Fulton County into more than [fol. 129] one district, something not heretofore done in Georgia. The population of Fulton County alone exceeds that of the nearest district in size—the seventh—by over twenty three per cent. A chain reaction effecting the make

<sup>3</sup> An adoption of the view of the American Political Science Association.

<sup>4</sup> To the nearest one thousand.

up of every congressional district in the state may be set off. We say this to demonstrate the legislative nature of the problem where a broad state-wide approach will be needed. We also point out that such a formula as suggested by plaintiffs, requiring as it would the division of Fulton County, may or may not be agreeable to the majority of the voters of Fulton County, assuming that they are entitled to a voice in the matter, and this again points up the desirability of solution if at all possible in the legislative forum. Of course, a division of Fulton County has not been suggested, only the formula.

The problem here is not peculiar to Georgia. For example, Florida has recently substantially changed its congressional districts by reason of the addition of four new congressmen making a total of twelve. The districts there now range in population from a low of 241,250 to a high of 660,345 as compared to the Florida average of 412,630 a variance greatly exceeding the suggested standard. Dade County with a population of 935,047 is divided among two districts, one consisting of a part of Dade County only, and the other consisting of an adjoining county and the balance of Dade County. Duvall, Hillsborough, and Pinellas Counties each constitutes a district under the new plan with populations respectively of 455,411, 397,788, and 374,665, a sharp example of the variance in population per district if counties are to continue as a basis for districts except where the population of a county is so large as to require division.

There are 435 congressional districts in the United States. Twenty two congressmen will be elected state-at-large in 1962. Of the remaining 413, the Fifth District of [fol. 130] Texas has the largest population, 951,527. The Fifth District of Georgia, here under discussion is next. There are twenty two districts with populations exceeding 600,000. Eighty districts have populations more than fifteen per cent above the state average, while ninety have populations of more than fifteen per cent below the state district average. Using ten per cent as a variance, or tolerance, one hundred eight districts are above and one hundred twenty five are below the average, a total of two hundred thirty three or more than one-half of all congressional districts. These figures in no way reflect on the problem of

deprivation of rights of the type here asserted through use of the gerrymander, a problem with which we are not concerned here but one that could well be within the rationale of any decision reached.

The following table shows the considerable difference in population in the named states between the districts having the highest and lowest number of inhabitants. Even a cursory examination of it indicates that in virtually no state do the districts contain "as nearly as practicable an equal number of inhabitants" as was formerly required by the Congress.

The table is based on only four hundred thirteen out of the total of four hundred thirty five congressional districts. Only forty two states are listed. The twenty two of the seats to be filled by elections at-large are: Alabama—8, Alaska—1, Connecticut—1, Delaware—1, Hawaii—2, Maryland—1, Michigan—1, Nevada—1, New Mexico—2, Ohio—1, Texas—1, Vermont—1, and Wyoming—1. The districts shown are as constituted January 1, 1963 while the populations are according to the 1960 census.



| <u>STATE</u>   | <u>AVERAGE<br/>POPULATION<br/>PER DISTRICT</u> | <u>HIGH</u> | <u>LOW</u> |
|----------------|--|-------------|------------|
| Arizona        | 434,053  | 663,510     | 198,236    |
| Arkansas       | 446,568  | 575,385     | 332,844    |
| California     | 414,009  | 591,822     | 301,172    |
| Colorado       | 438,486  | 653,954     | 195,551    |
| Connecticut    | 507,046  | 653,589     | 318,942    |
| Florida        | 412,629  | 660,345     | 237,235    |
| Georgia        | 394,311  | 823,680     | 272,154    |
| Idaho          | 333,595  | 409,949     | 257,242    |
| Illinois       | 420,100  | 557,221     | 277,169    |
| Indiana        | 423,863  | 697,567     | 290,596    |
| Iowa           | 393,933  | 403,442     | 353,156    |
| Kansas         | 435,722  | 539,592     | 373,583    |
| Kentucky       | 434,022  | 610,947     | 350,839    |
| Louisiana      | 407,127  | 536,029     | 263,850    |
| Maine          | 484,632  | 505,465     | 484,632    |
| Maryland       | 442,955  | 711,045     | 243,570    |
| Massachusetts  | 429,048  | 478,962     | 376,336    |
| Michigan       | 434,621  | 802,994     | 177,431    |
| Minnesota      | 426,733  | 482,872     | 375,475    |
| Mississippi    | 435,628  | 608,441     | 295,072    |
| Missouri       | 431,881  | 505,854     | 381,602    |
| Montana        | 337,383  | 400,573     | 274,194    |
| Nebraska       | 470,443  | 530,507     | 404,695    |
| New Hampshire  | 303,460  | 331,818     | 275,103    |
| New Jersey     | 404,452  | 585,586     | 255,165    |
| New York       | 409,324  | 469,908     | 348,940    |
| North Carolina | 414,195  | 491,461     | 277,861    |
| North Dakota   | 316,223  | 333,290     | 299,156    |
| Ohio           | 422,017  | 726,156     | 236,288    |
| Oklahoma       | 388,047  | 552,863     | 227,692    |
| Oregon         | 442,171  | 522,813     | 265,164    |
| Pennsylvania   | 419,235  | 553,154     | 303,026    |
| Rhode Island   | 429,744  | 459,706     | 399,782    |
| South Carolina | 397,099  | 531,555     | 272,220    |
| South Dakota   | 340,257  | 497,669     | 182,845    |
| Tennessee      | 396,343  | 627,019     | 223,387    |
| Texas          | 435,439  | 951,527     | 216,371    |
| Utah           | 445,313  | 572,654     | 317,973    |
| Virginia       | 396,694  | 539,618     | 312,890    |
| Washington     | 407,602  | 510,512     | 342,540    |
| West Virginia  | 372,084  | 422,046     | 303,098    |
| Wisconsin      | 395,177  | 530,316     | 236,870    |

It is readily apparent from these undisputed facts that plaintiffs, not unlike many millions of other citizens throughout the Republic, are being deprived of equal treatment arising from the excess in population of their congressional district as compared with that of other districts in Georgia. Such unequal or discriminatory treatment to be actionable, if judicially cognizable, a matter to be hereinafter discussed, must reach the point of invidiousness. *Baker v. Carr*, supra; *Sanders v. Gray*, supra; and *Toombs v. Fortson*, supra.

Our jurisdiction of a matter such as this can no longer be doubted; and it is settled that plaintiffs asserting rights of the type here involved have standing to sue. *Baker v. Carr*; *Wood v. Broom*, 1932, 287 U.S. 1, 72 S.Ct. 648, 77 L.Ed. 131; *Colegrove v. Green*, 1946, 328 U.S. 549, 66 S.Ct. 1198, 90 L.Ed. 1432; *Scholle v. Hare*, 1962, 8 L.Ed. 1; and *W.M.C.A., Inc. v. Simon*, 1962, 30 L.W. 3383. We hold too that the issue presented is justiciable but that question requires some elaboration.

And if the issue were one solely of state action under the Fourteenth Amendment, separate and apart from rights and duties devolving on the Congress under the Constitution and from congressional action or inaction, our problem would be greatly simplified. We would apply the test for invidious discrimination by considering all relevant factors, including a determination of rationality of state policy behind the statutory system, arbitrariness, whether the system has a historical basis in our political institutions, together with the presence or absence of political remedy. *Baker v. Carr*; *Sanders v. Gray*; and *Toombs v. Fortson*. The test is to be made on the sum of all of these factors and the asserted violation must be clear for we are dealing with the constitutionally based relationship between federal and state governments. *American Federation of Labor v. Watson*, 1946, 327 U.S. 582, 66 S.Ct. 761, 90 L.Ed. 873; *McGowan v. Maryland*, 1961, 366 U.S. 420, 81 S.Ct. 1101, 66 L.Ed. 2d 393.

[fol. 133] If the state action—here the statute setting up congressional districts—offends fundamental political concepts inherent in a republican form of government, giving

due regard to each factor and the rights of the plaintiffs and all others in their class as compared to those similarly situated in other congressional districts of Georgia, the statute must be stricken because of being discriminatory to the degree of invidiousness.

In our view the statute here when enacted reflected a rational state policy to set up the congressional districts in Georgia with some reasonable relation to population. On the other hand it now reflects a system which has become arbitrary through inaction when considered in the light of the present population of the Fifth District and as measured by any conceivable reasonable standard. The statute does have a historical basis in that it is of the type used in the remaining states of the Union with but few exceptions for more than one hundred years, and of a type that was required by the Congress from 1872 through 1929. As to political remedy, we only recently required by our decision in *Toombs v. Fortson* that the General Assembly of Georgia be fairly apportioned. It may well be that the arbitrariness which we find to be present as the statute relates to the Fifth District and to the rights of plaintiffs will be corrected by the reapportioned Assembly.

Our view is buttressed by a due regard for the admonition in *Baker v. Carr* that a "judicially manageable standard" be adopted. This dictates that a reasonable time be afforded for the normal state government processes, where there is a substantial chance of relief as we believe there is, to run their course.

[fol. 134] So tested, from the standpoint of Fourteenth Amendment rights or the right to choose Representatives under Art. I, Section 2 of the Constitution, we do not now find proscribed invidiousness. We would deny relief at this time but retain jurisdiction to again consider the contentions of plaintiffs, if necessary, after the expiration of a reasonable time for relief by way of political remedy.

But we cannot rest our decision at or on this point because the problem goes deeper. We are not dealing simply with state action under the Fourteenth Amendment or in violation of Art. I, Section 2 of the Constitution for the state action complained of is inextricably subject to the rights allocated to Congress under the Constitution. And defendants are entitled to their due—a final decision.

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As was said for the majority in *Colegrove v. Green*, supra, where similar relief was sought in a suit alleging malapportioned congressional districts:

"The petitioners urge with great zeal that the conditions of which they complain are grave evils and offend public morality. The Constitution of the United States gives ample power to provide against these evils. But due regard for the Constitution as a viable system precludes judicial correction. Authority for dealing with such problems resides elsewhere. Article I, Section 4 of the Constitution provides that 'The Time, Places and Manner of holding Elections for . . . Representatives, shall be prescribed in each state by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations . . .'. The short of it is that the Constitution has conferred upon Congress exclusive authority to secure fair representation by the States in the popular House and left to that House determination whether States have fulfilled their responsibility. If Congress failed in exercising its powers, whereby standards of fairness are offended, the remedy ultimately lies with the people. Whether Congress faithfully discharges its duty or not, the subject has been committed to the exclusive control of Congress. An aspect of government from [fol. 135] which the judiciary, in view of what is involved, has been excluded by the clear intention of the Constitution cannot be entered by the federal courts because Congress may have been in default in exacting from States obedience to its mandate."

Only seven members of the court participated in this decision, two concurring in the opinion by Justice Frankfurter and Justice Rutledge concurring in the result to make the majority. His concurrence was based on the view that

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\* The Constitution enjoins upon Congress the duty of apportioning Representatives "among the several states . . . according to their respective numbers. Article I, Section 2. Congress has at times been heedless of this command and not apportioned ac-



the complaint should be dismissed for want of equity and we perceive this to be the holding of the majority. He recognized that the court had jurisdiction and that a justiciable issue was presented, citing *Smiley v. Holm*, 1932, 285 U.S. 355, 52 S.Ct. 397, 76 L.Ed. 795. He pointed out that four of the nine justices in *Wood v. Broom*, *supra*, where the majority dismissed a similar suit on the ground that there was no congressional requirement after the 1929 Apportionment Act of compactness, contiguity or equality in the number of inhabitants for congressional districts, were of the opinion that dismissal should have been for want of equity. His basis for want of equity holding was that the court would be pitched into delicate relation to the functions of state officials and the Congress compelling them to take [fol. 136] action which they have declined to take voluntarily, and because the short time remaining before the election made effective relief doubtful. He thought a state-at-large election would deprive Illinois citizens of representation by districts "which the prevailing policy of Congress demands"; citing 46 Stat. 26, c. 28, as amended, Title 2, USCA, Section 2a. He concluded:

"If the constitutional provisions on which appellants rely give them the substantive rights they urge, other provisions qualify those rights in important ways by vesting large measures of control in the political subdivisions of the government and the state. There is not, and could not be except abstractly, a right of absolute equality in voting. At best there could be only a rough approximation. And there is obviously considerable latitude for the bodies vested with those powers to exercise their judgment concerning how best to attain this, in full consistency with the Constitution."

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cording to the requirements of the census. It has never occurred to anyone that the court could mandamus the Congress to perform its mandatory duty to apportion. *Colegrove v. Green*, pp. 554-555.

Article I, Section 5 of the Constitution makes each House the sole judge of the qualifications of its own members.

"The right here is not absolute. And the cure sought may be worse than the disease."

Justices Douglas and Murphy joined Justice Black in a dissent. It was their view that the case involved the federally protected right to vote, Article I, Section 2, Const., Fourteenth Amendment, Section 2, and it was implicit in their dissent that they considered this right to be absolute, equating it with a denial of the franchise on account of race, creed or color. Cf. *Ex parte Yarbrough*, 1884, 110 U.S. 651, 4 S.Ct. 152, 28 L.Ed. 274; *Nixon v. Herndon*, 1927, 273 U.S. 536, 47 S.Ct. 446, 71 L.Ed. 759; *Lane v. Wilson*, 1939, 307 U.S. 268, 59 S.Ct. 872, 83 L.Ed. 1281; and *United States v. Classic*, 1941, 313 U.S. 299, 61 S.Ct. 1031, 85 L.Ed. 1368. They would have invalidated the state apportionment statute and afforded plaintiffs the right to [fol. 137] vote in state-at-large elections. They thought the state had violated a duty to bring about approximately equal representation of citizens in the Congress.

We have dwelt at some length on the *Colegrove* case because it is decisive here. It is in point and a controlling precedent if still in force. It has been cited as authority in cases involving only state action where perhaps it is no longer a controlling authority in view of *Baker v. Carr*. Cf. *South v. Peters*, 1950, 339 U.S. 276, 70 S.Ct. 641, 94 L.Ed. 834; *Kidd v. McCanless*, 1956, 352 U.S. 920, 77 S.Ct. 223, 1 L.Ed. 2d 157; *Radford v. Gary*, 1957, 352 U.S. 991, 77 S.Ct. 559, 1 L.Ed. 2d 540. We make our determination of its efficacy by a consideration of the preservative treatment given it in *Gomillion v. Lightfoot*, 1960, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed. 110 and *Baker v. Carr*.

*Gomillion* involved a statute gerrymandering the City of Tuskegee, Alabama, so as to deny the vote to colored citizens. Justice Frankfurter, author of *Colegrove*, wrote the decision for the eight justices making the majority, Justice Douglas concurring in the result but adhering to his dissent in *Colegrove*, and *South v. Peters*, supra. In distinguishing *Colegrove* it was said that the dismissal of the complaint was affirmed "on the ground that it presented a subject not meet for adjudication." The court stated that the decisive facts of *Gomillion* were wholly different from the

considerations found controlling in *Colegrove*. The complaint in *Colegrove* was only as to the dilution of the strength of votes as a result of legislative inaction over a course of many years as compared with affirmative legislative action to deprive complainants of their votes in *Gomillion*.

[fol. 138] "... When a legislature thus singles out a readily isolated segment of a racial minority for special discriminatory treatment, it violates the Fifteenth Amendment. In no case involving unequal weight in voting distribution that has come before the Court did the decision sanction a differentiation on racial lines whereby approval was given to unequivocal withdrawal of the vote solely from colored citizens. Apart from all else, these considerations lift this controversy out of the so-called 'political' arena and into the conventional sphere of constitutional litigation." pp. 346-347

"... While in form this is merely an act redefining metes and bounds, if the allegations are established, the inescapable human effect of this essay in geometry and geography is to despoil colored citizens, and only colored citizens, of their theretofore enjoyed voting rights. That was not *Colegrove v. Green*." p. 347

Thus *Gomillion* taught in 1960 that *Colegrove* was still a living precedent and we must determine if it was overruled or sapped of its strength by *Baker v. Carr*. That case, in one fell swoop, lifted state political action offending the Fourteenth Amendment from the ancient doctrine whereunder it was thought improper for courts to enter the "political thicket" so often involved in reapportionment and related problems.

We have carefully considered its import and have noted that the court was at pains to distinguish *Colegrove*. The rationale of the decision goes no further than to open the doors of the courts for the purpose of adjudicating consistency of state action with the Federal Constitution where no question is concerned involving a coequal political

branch of the government. The treatment of *Colegrove* in *Gomillion* was reiterated. The court stated that *Colegrove* appeared to be based on a refusal to exercise equity's powers.

[fol. 139] The various concurring opinions in *Baker v. Carr* shed much light on the meaning of the majority opinion. Justice Douglas put aside the problem of "political" questions involving the distribution of power between the Court, Congress and the Chief Executive, and noted that the power of Congress to prescribe qualifications for voters and thus override state law was not in issue. He stated that the Federal Judiciary does not intervene where the Constitution assigns a particular function wholly and indivisibly to another department, and then in closing stated that the state legislative apportionment question before the court was removed from the impediment of *Colegrove* and the cases following it by the treatment given those cases in the majority opinion, i.e., that they were based on a refusal to exercise equity's power. Justice Clark also distinguished *Colegrove*. Justice Frankfurter in dissenting stated that the appellants sought to distinguish *Colegrove* on the ground that congressional, not state legislative, apportionment was involved, and we believe that this is the course that the majority of the court took. Justice Harlan described the holding in *Colegrove* as a declination by the court to adjudicate a challenge to the apportionment of seats by a state in the federal House of Representatives in absence of a controlling act of Congress, citing *Wood v. Broom*, *supra*.

It would be extraordinary indeed for the court to have departed any more than was absolutely necessary from the previous standard of withholding judicial relief in matters of the kind involved in *Baker v. Carr*, and a good reason to preserve the *Colegrove* doctrine while at the same time reversing the body of law as it concerned state action alone was that fairly apportioned state legislatures might [fol. 140] well alleviate congressional district disparity. But whatever the reason we think *Colegrove* stands and so long as it does it will be our guide.

We do not deem it to be a precedent for dismissal based on the non-justiciability of a political question involving

the Congress as here, but we do deem it to be strong authority for dismissal for want of equity when the following factors here involved are considered on balance: a political question involving a coordinate branch of the federal government; a political question posing a delicate problem difficult of solution without depriving others of the right to vote by district, unless we are to redistrict for the state; relief may be forthcoming from a properly apportioned state legislature; and relief may be afforded by the Congress.<sup>3</sup>

[fol. 141] Being persuaded of a want of equity in the position of plaintiffs to the extent that no cognizable constitutional claim is presented under the facts and subsisting authorities, their cause must be and is Dismissed. ●

This 20th day of June, 1962. ●

Filed June 20, 1962.

Griffin B. Bell, United States Circuit Judge, Fifth Circuit; Lewis R. Morgan, United States District Judge, Northern District of Georgia

TUTTLE, Circuit Judge, concurring in part and dissenting in part:

I concur in that part of the Court's opinion that denies an injunction at this time. I also concur in the statement of the facts. Because, however, I disagree with the conclusion that the suit should be dismissed, and because my conclusion that the injunction should be denied is based on somewhat different reasoning than that of my colleagues, I consider it appropriate to state my separate views.

The basis on which I would hold that the Court should now decline to grant the relief sought by these plaintiffs is simple. In *Baker v. Carr* the Supreme Court stressed as one of the factors which it considered as warranting a federal court's granting relief in a case of legislative mal-

<sup>3</sup> Representative Celler in a hearing before the Committee on the Judiciary, House of Representatives, recently stated that it was impracticable to draw congressional district lines in Washington. He stated that the economic and social interests of an area, its topography and geography, means of transportation, the desires



apportionment within a state the absence of any practical means by which the plaintiffs might hope to obtain relief at the hands of the state legislature. We also stressed this circumstance in the earlier cases decided by this Court. See *Sanders v. Gray*, N.D.Ga., 1962, 203 F. Supp. 158, and *Toombs v. Fortson*, N.D.Ga., 1962, — F. Supp. —.

[fol. 142] In view of the fact that this Court has now held that the Legislature of the State of Georgia must be apportioned in such a manner as to make it more responsive to population, it cannot be said now that there is no reasonable likelihood that the Georgia Legislature as properly constituted will fail in the future to rectify the gross inequalities that we find now exist in the Georgia Congressional Districts. I think, therefore, that it is a part of judicial statesmanship for this Court to refrain from stepping into this particular area until after the Legislature of the State of Georgia has had a fair opportunity to correct the present abuses.

The point of difference between my views and those of my colleagues is that I am not convinced that if the Georgia Legislature persists in the future in maintaining congressional districts as grossly disproportionate as they are today, the federal courts would have no power to take cognizance of such a situation and declare the state apportionment laws unconstitutional.

The view of the majority appears to be that even though the State Legislature takes no remedial action, the plaintiffs may not obtain the relief they seek at the hands of this Court. This, they say, results from the fact that the United States Congress has the power under Article I, Section 4, of the Constitution to require the state governments

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of the inhabitants as well as their elected representatives, and the political factors should all be considered and that state legislatures are far better equipped to determine and evaluate those factors than either the Congress or any national agency it might designate to do so. Under the proposed legislation the establishment of districts would be subject to review by the Federal District Courts. Hearing, June 24, 1959, before Subcommittee No. 2 of the Committee on the Judiciary, House of Representatives, 86th Congress, 1st Sess., on House Resolutions 73, 575, 8266 and 8473.

to eliminate the inequalities like that here complained of. The provisions of that Section are:

"The times, places and manner of holding elections for . . . Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations . . ."

The majority opinion reads the several opinions of the Justices of the Supreme Court in *Baker v. Carr* as perpetuating what my colleagues construe to be the rationale of [fol. 143] *Colegrove v. Green*, 328 U.S. 549, that is that where Congress has the power to deal with a matter which the States may also regulate, federal courts should not interfere with action taken by the State, even though in violation of the Fourteenth Amendment to the Constitution, because "due regard for the Constitution as a viable system precludes judicial correction." 328 U.S. 549, at 554.

It must be borne in mind that the opinion which contained the foregoing language was approved in whole by only three members of the Supreme Court out of the seven who participated in the decision. A fourth member of the Court, thus making a majority, concluded that the judgment of the lower court should be affirmed, but Justice Rutledge's views make it clear that he did not accept the theory or principle that it was beyond the competence of the federal courts to grant the relief sought, but rather that he felt the plaintiffs had not demonstrated their right to equitable relief under the circumstances; including the fact that the upcoming election was so imminent as to make it "doubtful whether action could, or would, be taken in time to secure for petitioners the effective relief they seek."

I am of the firm conviction that the majority opinion of the Supreme Court in *Baker v. Carr* makes it clear that nothing said in any of the opinions in *Colegrove v. Green* denies to the federal courts the power to grant relief in a congressional district case if the complaint and proof establish a right to equitable relief from grossly disproportionate districting. On page 226 of its opinion in *Baker v. Carr*, the majority outlines what constitutes a non-jus-

ticia ble "political question." It does this by enumerating the type of question that the Court had theretofore held to be non-justicia ble "political questions."

[fol. 144] "We have no question decided, or to be decided, by a political branch of government co-equal with this Court. Nor do we risk embarrassment of our Government abroad, or grave disturbance at home if we take issue with Tennessee as to the constitutionality of her action here challenged. Nor need the appellants, in order to succeed in this action, ask the Court to enter upon policy determinations for which judicially manageable standards are lacking."

As to the first of these questions referred to by the Court, which is the one which the majority here feels prevents judicial action by this Court, I consider it necessary to point out the following: Complete relief can be granted to the plaintiffs here without the slightest interference with prerogatives or powers of the Federal Congress. That body, under the reapportionment statutes referred to in the majority opinion, has directed the State of Georgia to divide the people of the State into congressional districts. Presumably Congress intended for the State to do so within constitutional standards. The fact that Congress did not expressly prescribe that congressional districts should be reasonably equal as to population does not, of course, prevent the State from districting according to equal population, nor, it seems to me, does it excuse the State from failing to do so if a failure to do so works an unconstitutional deprivation on the plaintiffs.

I find nothing in either *Colegrove v. Green* or in the language of the Supreme Court in *Baker v. Carr* discussing *Colegrove* in conflict with the views expressed here: that where Congress has directed a State to "regulate" a matter which the Constitution itself says shall initially be dealt with by the State, the State may not then, immune from judicial interference, exercise such power in an unconstitutional manner merely because Congress also has power to "at any time by law make or alter such regulations."

[fol. 145] It is, therefore, my opinion that this Court

should deny the injunction at this time, but that it should retain jurisdiction of the cause in order to give the State Legislature an opportunity to remedy what this Court has unanimously found to constitute a gross inequity. In default of such action by the State within a reasonable time, the Court should proceed to grant the relief prayed for.

This 20th day of June, 1962.

Elbert P. Tuttle, United States Circuit Judge, Fifth Circuit.

Filed June 20, 1962.

[fol. 146] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE  
UNITED STATES—Filed August 17, 1962

I.

Notice is hereby given that James P. Wesberry, Jr. and Candler Crim, Jr., the plaintiffs above named, hereby appeal to the Supreme Court of the United States from the final Order dismissing the Complaint entered in this action in this Court on June 20, 1962. This appeal is taken pursuant to 28 U.S.C. Sec. 1253.

II.

The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following: All pleadings and exhibits of plaintiffs and defendants.

III.

The following questions are presented by this appeal:

- (1) Whether Georgia Code Section 34-2301 deprives the [fol. 147] vided by the Fourteenth Amendment to the Constitution of the United States.



- (2) Whether Georgia Code Section 34-2301 abridges the privileges and immunities of plaintiffs as provided by the Fourteenth Amendment to the Constitution of the United States.
- (3) Whether Georgia Code Section 34-2301 deprives plaintiffs of liberty and property without due process of law as provided by the Fourteenth Amendment to the Constitution of the United States.
- (4) Whether Georgia Code Section 34-2301 is contrary to Article I, Section II, Clause I of the Constitution of the United States and therefore unconstitutional.

Frank T. Cash

Filed August 17, 1962

[fol. 149] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 150]

SUPREME COURT OF THE UNITED STATES

No. 507—October Term, 1962

JAMES P. WESBERRY, Jr., et al., Appellants,

vs.

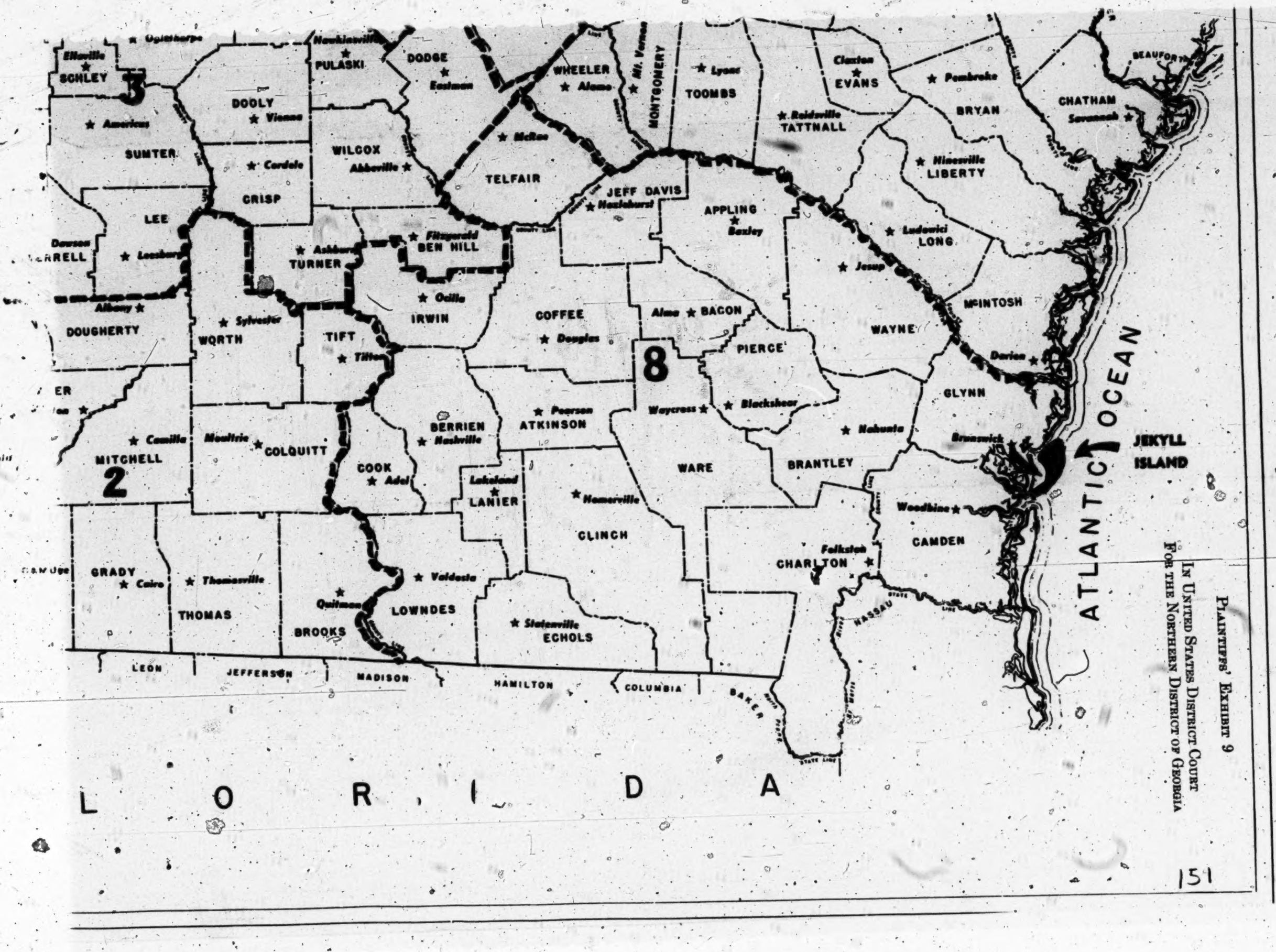
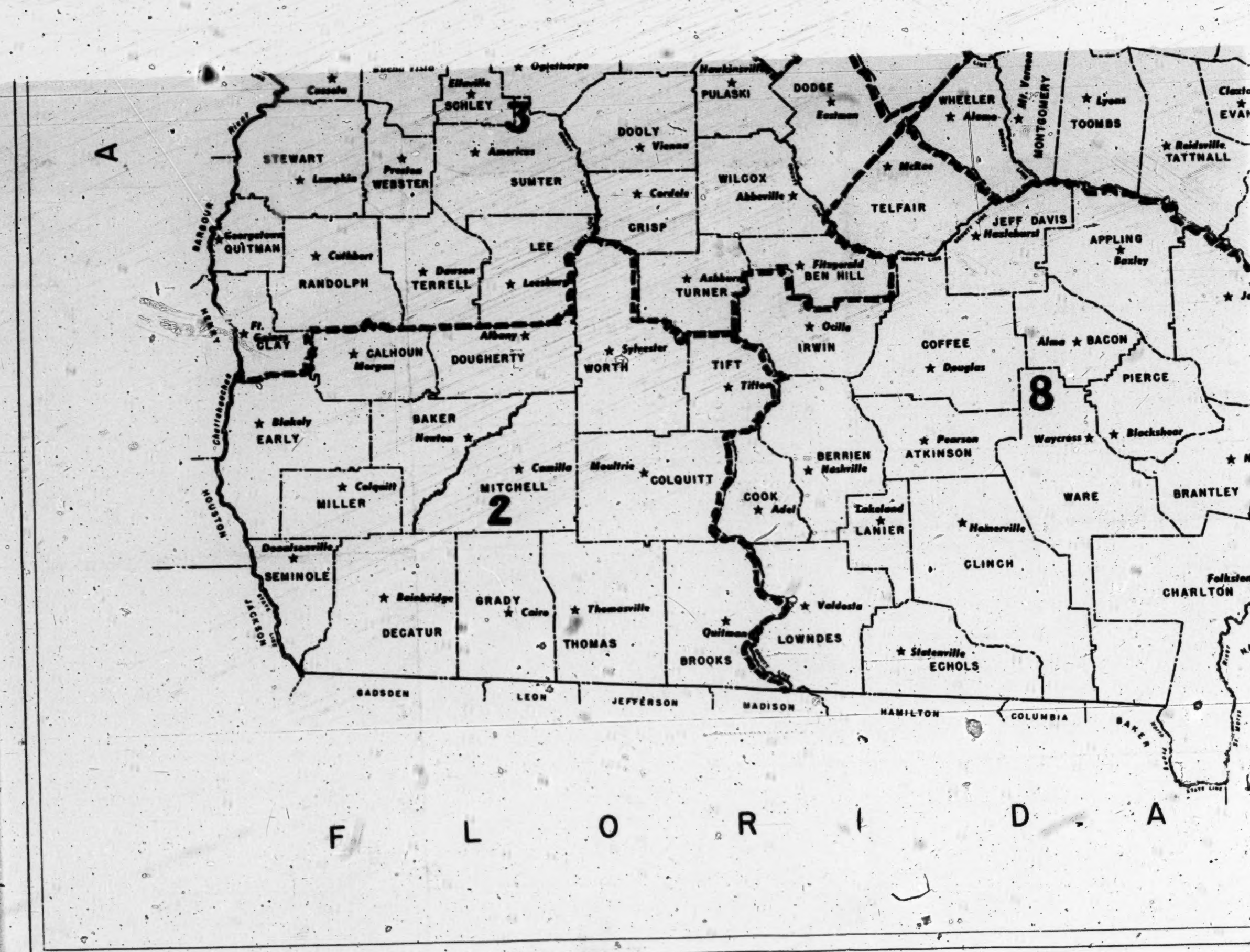
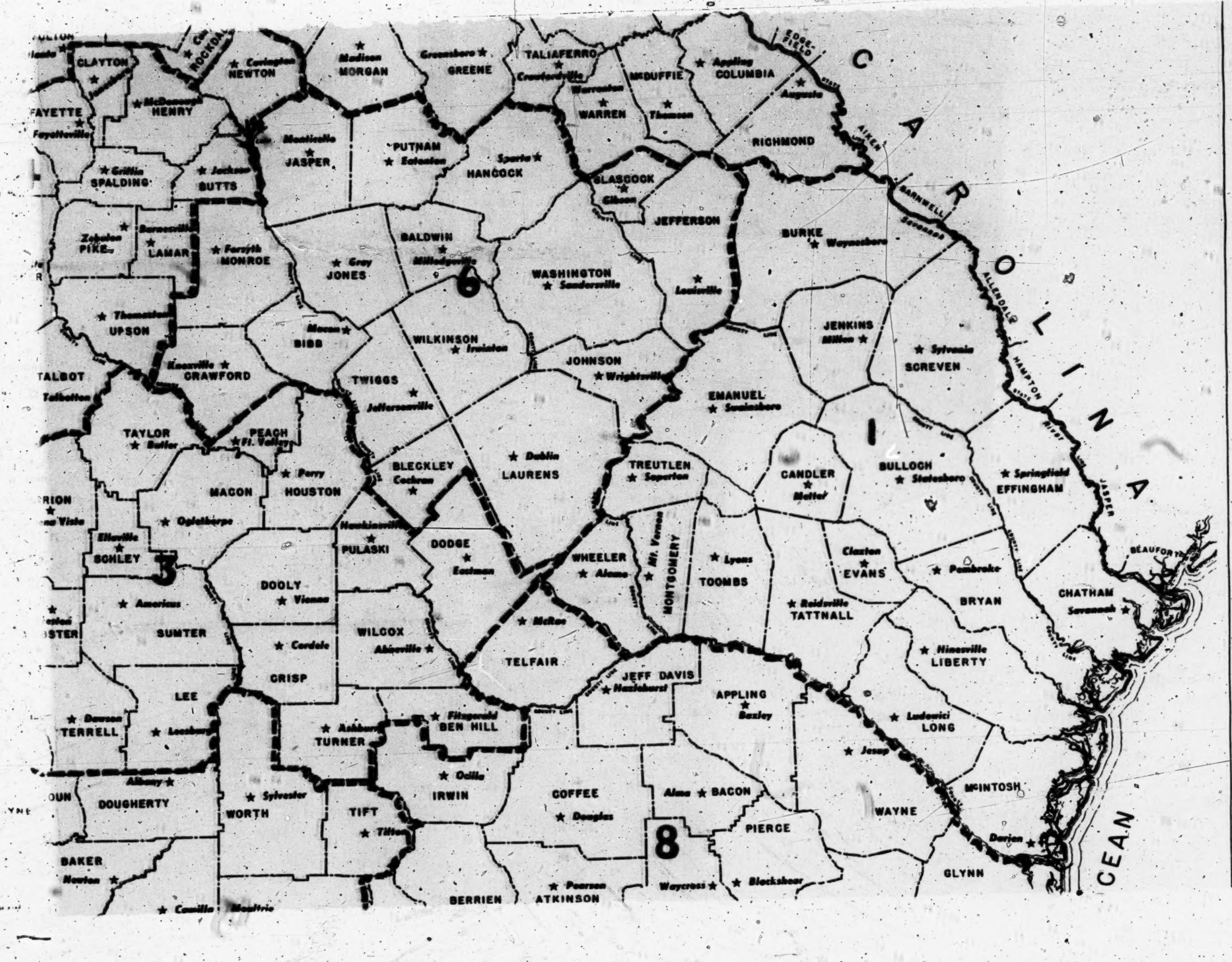
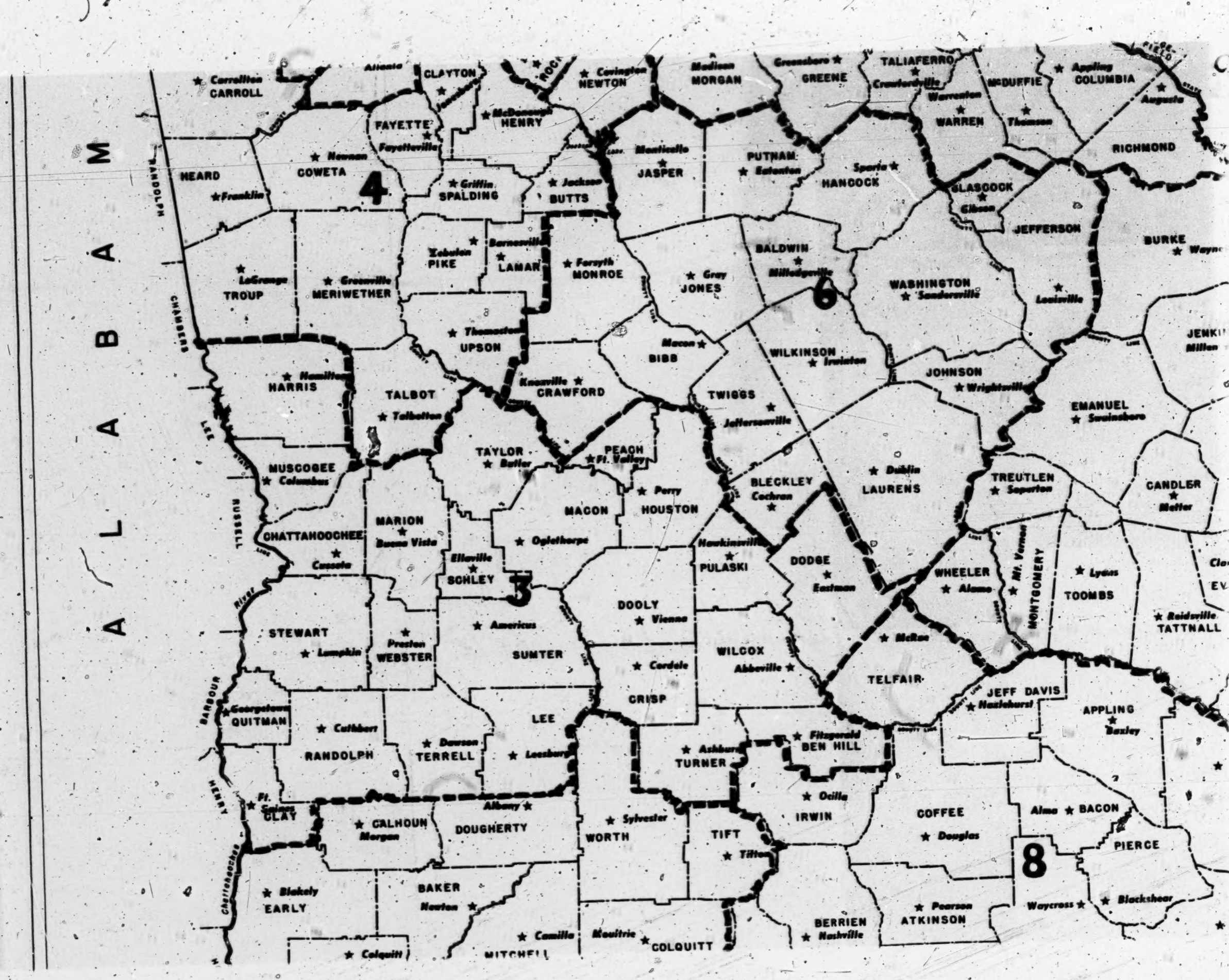
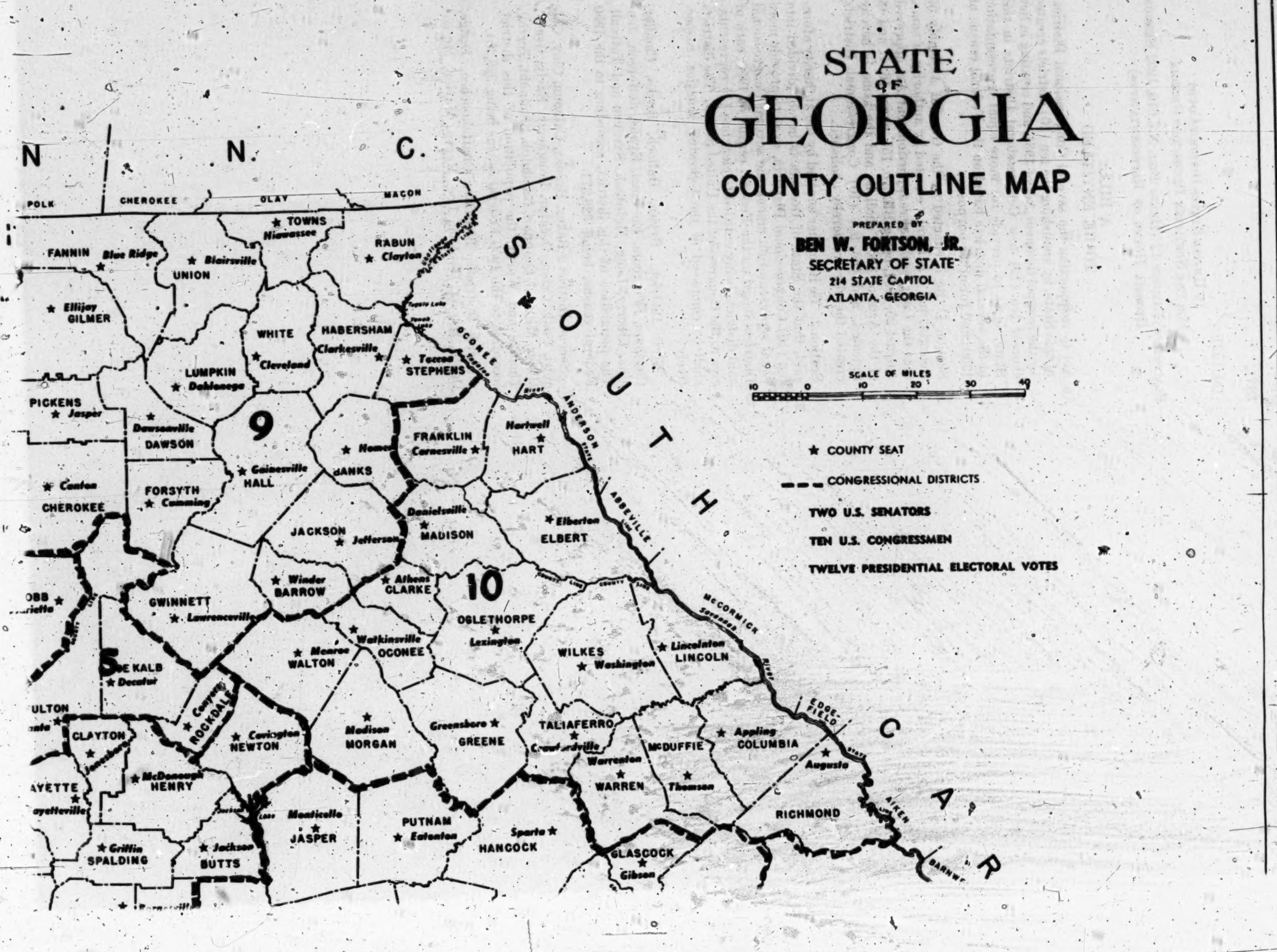
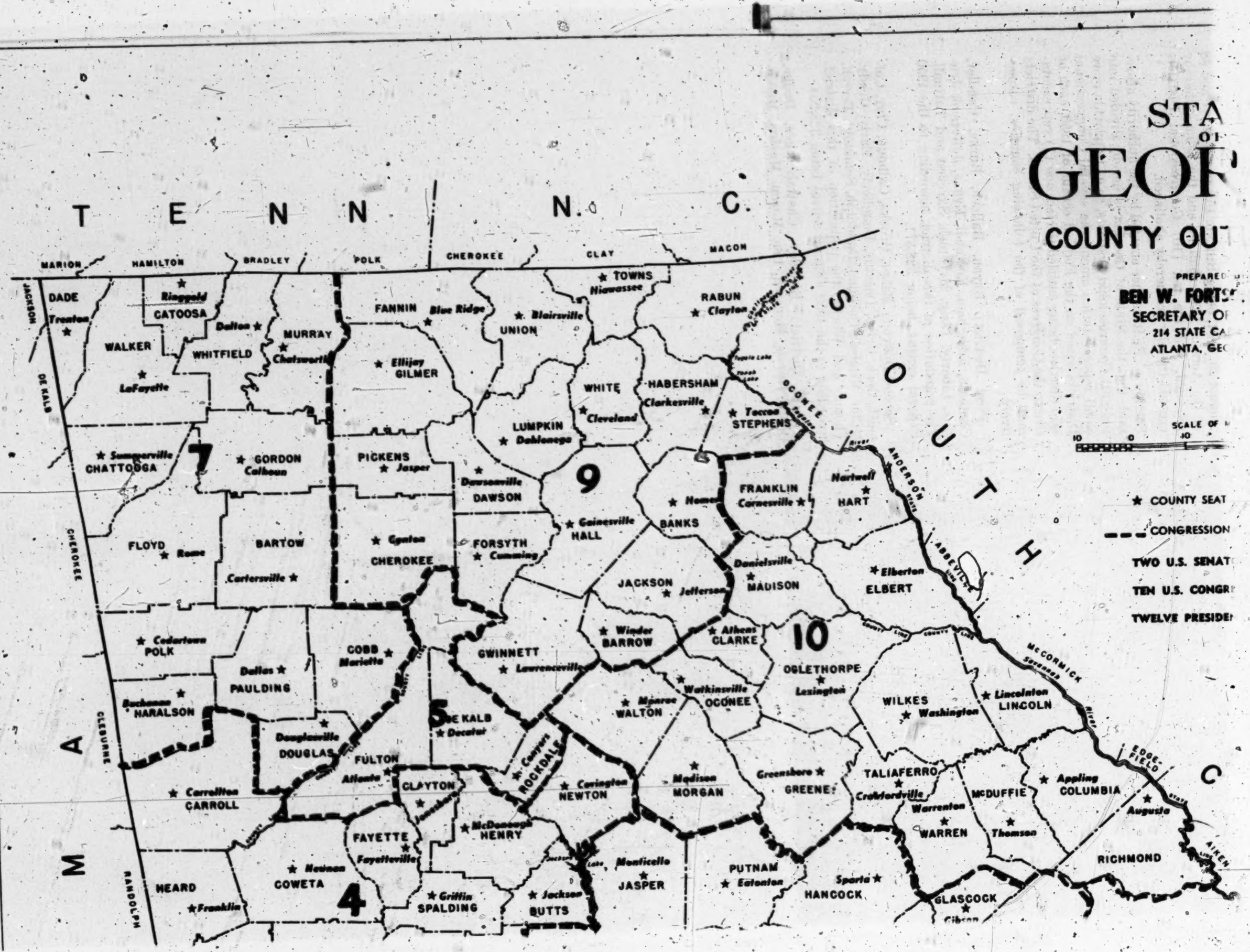
CARL E. SANDERS, etc., et al.

ORDER NOTING PROBABLE JURISDICTION—June 10, 1963

Appeal from the United States District Court for the Northern District of Georgia.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.







[fol. 152]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA

PLAINTIFFS' EXHIBIT 12 (HOUSE BILL NO. 610, 1952 SESSION,  
GEORGIA HOUSE OF REPRESENTATIVES)

A BILL  
TO BE ENTITLED

An Act to reapportion the several Congressional Districts of this State, by abolishing the ten (10) districts created by the reapportionment Act of 1931, and creating in lieu thereof ten (10) new Congressional Districts in this State, so as to provide for more equal representation in the several districts based on the Federal census of 1950; and for other purposes:

Section 1. Be it enacted by the General Assembly of Georgia, and it is hereby enacted by authority of same, that the Congressional reapportionment Act approved August 25, 1931, being Bill No. 157, pages 46, 47 and 48 of the Acts of 1931, shall be and the same is hereby repealed, and the ten (10) Congressional Districts created thereby are hereby abolished.

Section 2. Be it further enacted by the authority aforesaid, that the State of Georgia is hereby divided into ten (10) Congressional Districts, so as to provide more equal representation among the several Congressional Districts based on the Federal census of 1950, each of said districts being entitled to elect one (1) representative to the Congress of the United States. The districts shall be composed of the following counties, respectively:

First District: Bryan, Bulloch, Burke, Candler, Chatham, Effingham, Emanuel, Evans, Jefferson, Jenkins, Liberty, Long, McIntosh, Screven and Tattnall. The population of this district, according to the 1950 Federal census, being 328,371.

Second District: Baker, Brooks, Calhoun, Clay, Colquitt, Cook, Crisp, Decatur, Dougherty, Early, Grady, Miller, Mitchell, Quitman, Randolph, Seminole, Terrell, Thomas and Worth; the population of this district, according to the 1950 Federal census being 328,254.

Third District: Bleckley, Chattahoochee, Dodge, Dooley, Harris, Houston, Lee, Macon, Marion, Musco-

gee, Peach, Pulaski, Schley, Stewart, Sumter, Talbot, Taylor, Telfair, Webster and Wilcox; the population of this district, according to the 1950 Federal census being 328,664.

Fourth District: Carroll, Clayton, Coweta, Douglas, Fayette, Haralson, Heard, Henry, Lamar, Meriwether, Paulding, Pike, Polk, Spalding, Troup and Upson; the population of this district, according to the 1950 Federal census, being 328,491.

Fifth District: Fulton; the population of this district, according to the 1950 Federal census, being 466,172.

[fol. 153] Sixth District: Baldwin, Bibb, Butts, Crawford, Glascock, Hancock, Jasper, Johnson, Jones, Laurens, Monroe, Newton, Putnam, Twiggs, Walton, Washington and Wilkinson; the population of this district, according to the 1950 Federal census, being 328,984.

Seventh District: Bartow, Catoosa, Chattooga, Cherokee, Cobb, Dade, Floyd, Gordon, Murray, Pickens, Walker and Whitfield; the population of this district, according to the 1950 Federal census, being 327,667.

Eighth District: Appling, Atkinson, Bacon, Ben Hill, Berrien, Brantley, Camden, Charlton, Clinch, Coffee, Echols, Glynn, Irwin, Jeff Davis, Lanier, Lowndes, Montgomery, Pierce, Tift, Toombs, Treutlen, Turner, Ware, Wayne and Wheeler; the population of this district, according to the 1950 Federal census, being 328,353.

Ninth District: Banks, Dawson, DeKalb, Fannin, Forsyth, Gilmer, Gwinnett, Habersham, Hall, Lumpkin, Rabun, Rockdale, Stephens, Towns, Union and White; the population of this district, according to the 1950 Federal census, being 328,504.

Tenth District: Barrow, Clark, Columbia, Elbert, Franklin, Greene, Hart, Jackson, Lincoln, McDuffie, Madison, Morgan, Oconee, Oglethorpe, Richmond, Taliaferro, Warren and Wilkes; the population of this district, according to the 1950 Federal census, being 331,334.

Section 3. Be it further enacted by the authority aforesaid, that all laws and parts of laws, in conflict herewith be and the same are hereby repealed.

[fol. 153a] H. B. No. 610

### A BILL

To be entitled An Act to reapportion the several Congressional Districts of this State, by abolishing the ten (10) districts created by the reapportionment Act of 1931, and creating in lieu thereof ten (10) new Congressional Districts in this State, so as to provide for more equal representation in the several districts based on the Federal census of 1950; and for other purposes.

### IN HOUSE

Read 1st Time Feb 15 1951

Read 2nd Time.....19.....

Read 3rd Time.....19.....

and.....

Ayes.....Nays.....

Clerk of House.

By Mr. Alverson of Fulton

Referred to Committee on.....

Leg. & Cong. Reapp.

[Handwritten across face—Do Not Pass]

[fol. 154]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA

### PLAINTIFFS' EXHIBIT 13

MEMORANDUM SUBMITTED BY THE DEKALB COUNTY LEGISLATIVE DELEGATION TO THE COMMISSION APPOINTED PURSUANT TO HOUSE RESOLUTION 296, TO STUDY THE ADVISABILITY OF REAPPORTIONING REPRESENTATION IN THE CONGRESS AND IN THE GENERAL ASSEMBLY AND TO REPORT TO THE 1962 GENERAL ASSEMBLY.

In our opinion this commission has the most important assignment of all the interim committees created by the 1961 session of the General Assembly.

If its efforts result in the just reapportionment of Congressional Districts and the General Assembly, we are convinced that the cause of representative government under law will be strengthened; the state as a political subdivision will be revitalized; and respect for our political processes will be greatly increased.

On the other hand, if this commission fails to develop a practical method of achieving just reapportionment and nothing is done to protect our tradition of representative government, then the cause of representative government under law will be weakened; the state, as a political subdivision will continue to decline in prestige and effectiveness; and the people of Georgia will have less and less confidence in the processes of state government.

We regret that the Senate defeated House Resolution 145 which would have created a joint House-Senate Committee with public members appointed by the Governor. The Senate defeated that resolution by a vote of 30-19. An analysis of that vote shows that the 19 Senators who voted for the resolution represented more than 300,000 more Georgians than did the 30 who voted against making the study. Although the vote illustrates the problem the committee is dealing with, it also points up the difficulty of getting any plan which this Commission may ultimately propose enacted into law. No plan can be adopted without the concurrence of a majority of the members of both the House and the Senate.

[f6l. 155] We particularly appreciate the fact that the overwhelming majority in the House agreed to the creation of this study commission. Without such a study by experienced legislators it is altogether unlikely that any bill or plan could gain acceptance in a forty day session. With such a study, after public hearings, consideration of the population figures revealed by the 1960 census, and regard for the constitutional and statutory problems involved, we believe that it is an attainable goal for this committee to devise a plan whereby each congressional district would contain approximately one-tenth of the State's population, and the General Assembly could be constituted so that one house would be reasonably apportioned on the basis of population and the other would take into account geographical considerations.



Our delegation is aware of the difficulties involved and that there are those who say that those legislators who now hold a disproportionate amount of power will never agree to relinquish power so as to permit a just reapportionment.

We reject this line of thinking. Together we have nearly forty years of experience in serving with men throughout Georgia and we are convinced that the legislature can and will correct this increasingly unfair situation when they are confronted with a specific, practical way in which to do so. We believe a great majority of our members understand that it is *far* better for us to correct an obviously unfair situation than it is for us through default to let the Federal Courts take charge.

This, it seems to us, is the main task of the commission: To find the most practical manner of redistricting the state for congressional purposes, and to devise a structure for the General Assembly which would be feasible and which would accomplish the desired result.

[fol. 156] During the 1961 session the following memorandum was circulated among members of the legislature concerned with the problem of reapportionment and it contains one approach which we believe this commission should consider. This is the plan whereby the Senate would become the body which would be most nearly representative on the basis of population and the House would remain as it is, or, be reduced in size to one representative from each county, making a total of 159. Because the thoughts contained in the memorandum have been favorably received it is set forth in its entirety:

[fol. 157]

**MEMORANDUM CONCERNING THE URGENT NEED FOR JUST REAPPORTIONMENT OF THE GENERAL ASSEMBLY OF GEORGIA (1961 Session)**

The citizens of Georgia have an important stake in maintaining the tradition of representative government. For most of the people of our state this tradition is weakening, and, in some instances, almost gone.

The most conspicuous evidence that this tradition is taking a beating is in the apportionment of the General Assembly. This is resulting from spectacular and continu-

ing population shifts and from the failure of the executive department to assert leadership to protect this tradition, and from the refusal of previous legislatures to study the problem.

The 1961-62 General Assembly has a clear responsibility and it has a golden opportunity to take remedial action.

The tradition of free government in America is not that of a pure democracy but is that of a democratic republic where laws are made through *representative* legislatures. The Congress of the United States and forty-nine of the fifty state legislatures are bi-cameral and they are designed so that one house is reasonably apportioned on the basis of population and the other house takes into account geographical factors. Both factors deserve consideration.

Although the problem is not unique to Georgia, it has become acute because *neither* house of the Georgia legislature is reasonably apportioned on the basis of population.

1960 census figures show startling inequities in the apportionment of the state House of Representatives.

The provision for reapportionment contained in the 1945 State Constitution is virtually meaningless because compliance with this provision does not alleviate the inequities.

[fol. 158] Notwithstanding this fact, there are several ways the 1961-62 legislature could act decisively to immediately restore representative government.

The problem is this: What would be the simplest, most practical, understandable and desirable action to take?

It is a paradox that the Georgia constitution, although stating the high principles on which our government was founded, was drawn in such a way that it does not guarantee the realization of those principles. In fact, because of constitutional limitations contained in the constitution, it is impossible for the legislature to apportion the state House of Representatives on a reasonably representative basis.

The Preamble of the Constitution of the State of Georgia says:

"To perpetuate the principles of free government, insure justice to all, preserve peace, promote the interest and happiness of the citizen, and transmit to posterity the enjoyment of liberty, we, the people of Georgia,

relying upon the protection and guidance of Almighty God, do ordain and establish this Constitution."

And the first Article of the Bill of Rights says:

2-101. *Origin and foundation of government.* All government, of right, originates with the people, is founded upon their will only, and is instituted solely for the good of the whole. Public officers are the trustees and servants of the people, and, at all times, amenable to them.

And the following Articles of the Bill of Rights contained in our State Constitution are fundamental propositions on which our government was founded:

2-102. *Protection the duty of government.* Protection to person and property is the paramount duty of government, and shall be impartial and complete.

2-103. *Life, liberty, and property.* No person shall be deprived of life, liberty, or property, except by due process of law.

2-123. *Legislative, judicial, and executive powers, separate.* The legislative, judicial and executive powers shall forever remain separate and distinct, and no person discharging the duties of one, shall, at the same time exercise the functions of either of the others, except as herein provided.

[fol. 159] 2-125. *Citizens, protection of.* All citizens of the United States, resident in this State; are hereby declared citizens of this State, and it shall be the duty of the General Assembly to enact such laws as will protect them in the full enjoyment of the rights, privileges and immunities due to such citizenship.

2-501. *State rights.* The people of this State have the inherent, sole and exclusive right of regulating their internal government, and the police thereof, and of altering and abolishing their Constitution whenever it may be necessary to their safety and happiness.

The legislative department is established in the 1945 Constitution in Article III which provides:

- 2-1301. *Power vested in general assembly.* The legislative power of the State shall be vested in a General Assembly which shall consist of a Senate and House of Representatives.
- 2-1401. *Number of Senators and senatorial districts; change of districts.* The Senate shall consist of not more than fifty-four members and there shall be not more than fifty-four Senatorial Districts with one Senator from each District as now constituted, or as hereafter created. The various Senatorial Districts shall be comprised of the Counties as now provided, and the General Assembly shall have authority to create, re-arrange and change these Districts within the limitations herein stated.
- 2-1501. *Number of representatives.* The House of Representatives shall consist of representatives apportioned among the several counties of the State as follows: To the eight counties having the largest population, three representatives each; to the thirty counties having the next largest population, two representatives each; and to the remaining counties, one representative each.
- 2-1502. *APPORTIONMENT changed, how.* The above apportionment shall be changed by the General Assembly at its first session after each census taken by the United States Government in accordance with the provisions of Paragraph I of Section III of this Article.
- 2-1920. *Powers of the General Assembly.* The General Assembly shall have the power to make all laws consistent with this Constitution, and not repugnant to the Constitution of the United States, which they shall deem necessary and proper for the welfare of the State.

Article XIII of the State Constitution provides in Section 2-8101 that an Amendment must be agreed to by two-



thirds of the membership of the House and Senate, and by a majority of the electors qualified to vote for members of the General Assembly voting in a general election before it shall become a part of the Constitution of Georgia. [fol. 160] Referring back to the Bill of Rights of the State Constitution, Section 2-501, which defines States Rights, it says:

"The people of this State have the inherent, sole and exclusive right of regulating their internal government . . . and of altering . . . their Constitution whenever it may be necessary to their safety and happiness."

It is self-evident that our government must be representative if it is to be responsive and do those things which are necessary to our "safety and happiness". Yet, as a practical matter, our people are obstructed in keeping the House of Representatives reasonably apportioned on the basis of population because of the difficulty of initiating a corrective constitutional amendment. The *only* way such an amendment could be submitted to the people of Georgia would be *after* the approval of such a proposal by two-thirds of the members of the House of Representatives as now constituted. This would mean that a heavy majority of the membership of the House would have to agree to relinquish some political power, and, historically, this has been one of the most difficult political adjustments to accomplish.

The 1960 census reveals that more than half of the people of Georgia now reside in the 15 most populous counties, yet their representatives have less than 19 percent of the votes in the House. Less than half of the people of Georgia reside in the 144 smallest counties, yet their representatives have more than 81 percent of the votes in that body.

More than 90 counties are losing population steadily in recent years and more than 60 counties are gaining population steadily. The following figures tell the story:

|              | % of votes<br>in House | % of 1960<br>population | % of 1950<br>population |
|--------------|------------------------|-------------------------|-------------------------|
| 8 counties   | 12                     | 41                      | 38                      |
| 30 counties  | 29                     | 27                      | 24                      |
| 121 counties | 59                     | 32                      | 38                      |

[fol. 161] The "reapportionment" provided in the Constitution whereby Dougherty and Floyd County exchange places as 2 and 3 representative counties, and 3 other counties change places, is virtually meaningless in terms of correcting the growing inequities and protecting the tradition of representative government.

One solution would be to scrap the 3-2-1 arrangement in the present Constitution and provide that the House of Representatives should have not more than 160 (or some such number) members to be elected from districts reasonably apportioned after each census on the basis of population. There is nothing sanctified about the 3-2-1 formula. Dr. Albert Saye, the distinguished political scientist and historian at the University of Georgia, says on page 95 of his *Constitutional History of Georgia*: "This type (3-2-1) was proposed by a Constitutional convention held at Milledgeville in 1833 but was rejected when submitted to popular referendum. It was written into the Carpetbag Constitution of 1868; it was continued in the Constitution of 1877 and 1945."

Yet there are practical difficulties, in addition to those mentioned, in changing the formula in the House of Representatives. The House is the sixth largest legislative body in the 50 states. It is unwieldy now. No county would want to give up its representative and there would be nowhere to place chairs for additional representatives, should they be given to the larger counties. Furthermore, the tradition of legislative courtesy is so deep-rooted it would be difficult for large delegations from the most populous counties to get unanimous agreement on local legislation.

By the process of elimination, and because of the practicalities of the situation, the Senate then becomes the forum which could most easily be apportioned on the basis of population. The Constitution says only that there shall be not more than 54 senatorial districts. It would be relatively easy to create by act of the 1961 or 1962 legislature [fol. 162] 54 senatorial districts having within 15% of the mean population you arrive at by dividing 54 into the 1960 state population of 3,943,116. This figure would be 73,076.

Such an Act could be fortified by a constitutional amendment that would require such an apportionment after each census, and would grant judicial relief if the legislature failed to act. Such checks and balances against legislative inaction have been adopted by other states.

By taking this route there would be many advantages. It could be speedily done by the present General Assembly. It could be protected by a simple amendment to the Constitution. It would eliminate the rotation system in the Senate which has sapped the strength of that body and forced the retirement of many able and experienced men. It would not take away representation from any county, but would require every senator to make a race throughout his district at every election. It would not involve revision of the county unit system.

It would make the legislature more representative of the people of Georgia and, therefore, more responsive to their will.

It would make the legislature a stronger check on the executive.

And it would restore life and meaning to Article I of the Bill of Rights of the Georgia Constitution, which says: "All government, *of right*, originates with the people, is founded upon their will only, and is instituted solely for the good of the whole. Public officers are the trustees and servants of the people, and, at all times, amenable to them."

[fol. 163] Since the 1961 session, and after much discussion of the proposal outlined in the foregoing memorandum, the following conclusions seem justified:

1. Neither house of the General Assembly should be increased in size.
2. As a practical matter it would be easier to make the Senate representative on the basis of population than it would be to make the House the popular body.
3. No county should be expected to give up representation in the lower house.

4. Reduction of house membership from 205 to 159 would make the House a more efficient and deliberative body.
  5. The rotation system weakens the effectiveness and quality of the Senate, forces the retirement of able legislators and should be done away with.
  6. If Senators could succeed themselves they would no longer be automatic lame-ducks, there would be more prestige attached to the office, the Senate would then become the more experienced body and could "back-stop" the House.
  7. The objection has been made that Senatorial races would become more difficult and expensive, but this criticism has been off-set by the argument that a strong incumbent would often get by without opposition.
  8. Since the 1961 session a study of cases now pending in state and federal courts reveals an increasing tendency to accept jurisdiction of complaints about unfair apportionment and that failure of state legislatures to remove inequities accelerates the likelihood that there will be a judicial invasion of this field which historically belongs to the legislatures.
- [fol: 164] 9. If the legislature fails to act, the citizens of Georgia who feel they are being damaged by this inaction will seek redress and relief in state and federal courts and may get judicial relief.
10. The members of the General Assembly should be able to devise more acceptable and practical apportionment than could a judge or judges unacquainted with many practical political factors.

We call to the attention of the Commission the final report of the Committee on Legislative Processes and Procedures of the National Legislative Conference which has just been released. It states:

"One of the most basic problems of all, inescapable in a representative form of government, is the matter of



legislative apportionment. The Committee refrains from offering specific suggestions on this matter, but is forced to the conclusion that the continued flouting of constitutional apportionment requirements will greatly prejudice the confidence of the people in the processes of state government. At the same time, it would appear that the reapportionment provisions in many state constitutions are unrelated to present political realities. The Committee earnestly suggests that each state which does not in practice reapportion at the intervals in the manner constitutionally prescribed should make a thorough study of the problem and possible methods for solving it, including the use of non-legislative reapportionment bodies such as those currently employed in a dozen states."

In our judgment, the problem of legislative apportionment is the most formidable problem confronting this committee. It is the most basic. We believe that, if nothing else is accomplished, just legislative reapportionment should be accomplished as a result of this commission's work and subsequent action by the 1962 session of the General Assembly. If this is done then congressional redistricting and elimination of the inequities in the county unit system will be accomplished in succeeding sessions of the legislature as surely as day follows night.

[fol. 165]

#### CONGRESSIONAL DISTRICTS

Congressional redistricting should be an attainable goal at the 1962 session. The problem is much simpler of solution than legislative reapportionment.

Congressional seats are apportioned to the several states on the basis of their population. Georgia has ten of the 435 members in the U. S. House of Representatives. The districts have not been adjusted to take account of population shifts since the 1930 census so that the population of each district as shown by the 1960 census is now as follows:

|            |             |
|------------|-------------|
| 1. 379,933 | 6. 330,235  |
| 2. 301,123 | 7. 450,740  |
| 3. 422,198 | 8. 291,185  |
| 4. 323,489 | 9. 272,154  |
| 5. 823,680 | 10. 348,379 |

This striking departure from districts reasonably the same in population has come about as a result of the rapid shifts in population and the failure of the state legislature to make adjustments after the 1940 and 1950 census.

It would be possible to revise these districts in such a way that only two incumbent Congressmen would be affected. We do not contend that each district should have the exact number as any other district. If this were the case each district would have 394,311 people in it. We do contend that the districts should be drawn in such a way that no district should have a population more than ten per cent above or below the average.

There are many good reasons why Congressional Districts should be kept approximately the same size in terms of population.

[fol. 166] The United States House of Representatives is supposed to be the popular branch of Congress and most closely reflect the will of the people of the United States. Congressmen, for this reason must stand for office every two years.

The workload of our congressional delegation should be evenly divided. If one Congressman has to represent three times as many people as another Congressman (and this is the case under the present set-up) then he has three times as difficult a job in running for office, in answering his mail, in keeping his constituents acquainted with what he is doing, and it is just so much more difficult for his constituents to reach him, and for him to cover his district.

We represent a county of 256,000 people and it is difficult to stay in touch with people throughout our county. Approximately 400,000 constituents is a sizeable number and no Congressman should be expected to effectively represent many more than this number. Keeping government

close to the people demands that the burden of Congressional representation be shared on a fair basis.

Georgia has fallen behind in this matter of fair Congressional Districting to the extent that Florida, Alabama, Tennessee, North Carolina, South Carolina have much more equitable districting than Georgia and those states are moving to bring their districts in line with 1960 realities.

Jefferson County, Alabama, has its own Congressman, as does Shelby County, Tennessee. There is no reason why Fulton County should not have its own Congressman. If the Fifth District were divided into two districts, each district would still have more than the average if districts were exactly apportioned.

Many people have over-looked the fact that inequitable districting of the state for congressional purposes has [fol. 167] weakened the ideal of representative state government. This is due to the fact that many of our most important boards and commissions are affected by congressional apportionment. Among them are boards supervising the expenditure of hundreds of millions of dollars annually: The State Highway Board, the State Board of Education, the State Board of Regents, the Board of Health, the State Welfare Advisory Board. These boards are tremendously influential in the expenditure of more than ninety percent of all state revenues.

In addition, the State Game and Fish Commission, the Advisory Committee to the Director of the Department of Commerce, and many others, draw their membership from Congressional Districts.

It is apparent that Congressional Districting has an impact throughout virtually all functions of state government and, to the extent that we permit these districts to be unrepresentative, we permit our state government as a whole to be unrepresentative in its decisions.

## CONCLUSION

We have intentionally limited this memorandum to legislative and congressional reapportionment, although it is clear that this committee will study the county unit system since the identical inequities present in the apportion-

ment of the House are present in the allocation of county units. But the county unit system is a method of determining the outcome of party primaries. Although it is related, it is a separate problem.

Our views concerning the county unit system will be presented at another time in a separate memorandum.

We respectfully request that this commission devise a specific plan whereby Congressional Districts are reasonably apportioned on the basis of population and whereby one House of the legislature is made reasonably representative on the basis of population. Both of these could be accomplished at the 1962 session by statute if the commission accepts our recommendation to revamp the Senate.

This memorandum is respectfully submitted by the undersigned who represent the 256,000 Georgians who reside in DeKalb County, now the second most populous county in Georgia.

W. Hugh McWhorter  
Senator, 34th District

Guy W. Rutland, Jr.  
Pierre Howard  
James A. Mackay  
DeKalb County Representatives



[fol. 169]

## PLAINTIFFS' EXHIBIT 14

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA

**JAMES A. MACKAY**  
DeKalb County  
Masonic Temple Bldg.  
Decatur, Georgia

**MEMBER COMMITTEES:**  
Special Judiciary  
University System of Georgia

Secretary  
Banks & Banking

Vice-Chairman  
Sub-Committee  
(Banks & Banking)  
Industrial Loans

(Emblem)

**HOUSE OF REPRESENTATIVES**  
HOUSE CHAMBER  
ATLANTA

October 10, 1961

Dear Fellow Georgian:

Your help is needed. It is urgently needed if we are to restore fair representative government under law in our State government!

This priceless political institution is slipping away from us day by day. While apathy and inaction subvert it here at home, it is under ruthless attack around the world by men who would govern by bullets instead of ballots—men who have contempt and scorn for the ideal of government by the consent of the governed.

The colony of Georgia was founded by men who cherished this ideal. Georgians of almost every generation have shed blood and have been willing to die to defend and uphold their right to representative government.

Today our nation's resources—men and material—are deployed around the world for the same purpose. And wherever Americans keep watch on land, sea or in the air you will find young Georgians doing their part.

We owe them more than gratitude. We have a duty here at home to restore and safeguard the ideal for which they risk their lives at lonely outposts. Yet the truth is that we have done little or nothing to stop the steady erosion whereby our government has become less and less representative and therefore less responsive to the will of our people.

We have not taken the trouble to assess what is happening and why. We have not tried hard enough to see what can be done to recover for ourselves, and to secure for future generations, representative government under law.

It will profit little to search for a scapegoat—to place blame on an individual or a group of individuals. What we must do is search for positive, practical political solutions and then press for action until we have made our state government truly representative of the people of Georgia.

[fol. 170] A good place to begin the search for our trouble is in the Constitution of Georgia. Article I of the Bill of Rights says: "All government, of right, originates with the people, is founded upon their will only, and is instituted solely for the good of the whole. Public officers are the trustees and servants of the people, and at all times, amenable to them."

Notwithstanding this fine statement of the ideal, the Constitution does not *require* reapportionment of the legislature after each census to take in to account population changes and keep it representative. Men must *voluntarily* make these adjustments and relinquish power. There is no check and balance against legislative inaction.

The Constitution, instead of providing for a substantially representative arrangement in the lower House, still has an arbitrary assignment of 3 representatives from the 8 most populous counties, 2 from the 30 next most populous

counties and 1 from the 121 smallest counties. This 3-2-1 scheme has remained in every constitution since it was put there by the Carpetbag legislature of 1868.

Yet to change this scheme requires a constitutional amendment approved by two-thirds of the membership of both House and Senate *before* the people could vote on such a proposal. The same would be necessary if a check and balance against legislative inaction were written in to the Constitution.

Since the legislature alone can initiate constitutional amendments, revise senatorial districts, keep congressional districts reasonably apportioned, and write election laws that are fair in their application to citizens throughout Georgia, the search for the cause of our trouble centers in the present structure of the General Assembly.

A study of the 1940, 1950 and 1960 census reveals that both houses of the legislature are becoming less and less representative of the people of our state as a whole. Senatorial districts have populations ranging from 13,050 to 556,326 and in the house the ratio of population to representative ranges from 1 for 1876 people in Echols County to 3 for 556,326 people in Fulton.

Because of the rotation system in the Senate it is fair to say that two-thirds of our people have no representation in the Senate at all times. Capable senators cannot succeed themselves and the result is a continuity of inexperience.

[fol. 171] Perhaps even more striking is the fact that the representatives of less than 24% of Georgia's 3,943,116 people command a majority of legislative votes and can therefore pass any law no matter how discriminatory and defeat any bill no matter how praiseworthy.

More than half of the people of Georgia now live in the 16 largest counties yet their representatives have less than one-fifth of the votes that make the laws under which they must live. And the political position of all our citizens is steadily declining, because government originates less and less with the people, is founded less and less on their will.

Primary election laws reflect these same inequities, penalize citizens in the growing counties, and make state-house officers less and less amenable to the people and cause these officers to be more and more indifferent to the good of the whole people of Georgia. The Neil primary act, for example, has not been revised in over forty-four years. The inequities of the county unit system make a mockery of democratic processes and respect for state government is undermined.

Another symptom of the declining vitality of the legislature is its failure to keep our congressional districts reasonably equal in population. Not for thirty years have these districts been adjusted to keep pace with population changes. Our fifth district now has more than 823,000 citizens—more than twice the national average and three times the size of our least populous Congressional District.

#### What can be done?

First, and foremost, our people must take time to examine the Constitution and its demonstrated shortcomings. They need to rediscover the importance of the state legislature in our system of state government. They must work for its revitalization by making it truly representative.

We must counteract the cynical view that the members of the General Assembly will not recognize their responsibility to reapportion on a just basis—even if it means the relinquishment of power unjustly held. My experience with members of the General Assembly causes me to have faith that, given positive executive and legislative leadership, they will take such action as may be necessary to install constitutional safeguards and enact statutes which will restore fair representative government under law.

[fol. 172] Second, if our efforts fail in seeking corrective legislative action, then we must turn to our courts.

This is not a fight just for the people in the growing counties. It is a fight for all the people of Georgia. Victory will mean that *all* our people will share an interest in their state government. It will mean that every man and woman



can seek office on a fair competitive basis and in turn it will mean that our people will draw on the talents of all our people to find the ablest leadership available to grapple with the old and new problems of state government.

Those of us who recognize this duty to restore fair representative government under law here in Georgia will, when we have won our goal, give new meaning to the grand conception that all government is founded on the will of the people and instituted solely for the good of the whole.

Georgia's chance for progress is sorely handicapped. Until fair representative government is restored there is little hope for the kind of progress of which we are capable in building a better Georgia. Let us remove this handicap!

You, individually, are part of public opinion. Your voice, along with others, can become so powerful, that it will sweep away the obstacles which today seem so formidable.

Make your views known to the men who would lead Georgia in the years that lie ahead!

Sincerely yours,

/s/ JAMES A. MACKAY

James A. Mackay

DEPENDANTS' EXHIBIT 1  
IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
EXHIBIT C

CONGRESSIONAL DISTRICTS RANKED ACCORDING TO POPULATION

DISTRICTS EFFECTIVE JANUARY 1963 POPULATIONS, 1960--

| CONGRESSIONAL<br>DISTRICT | 1960<br>POPULATIONS | CARD<br>NO. |
|---------------------------|---------------------|-------------|
| 1 TEXAS                   | 5TH 951527          | 1           |
| 2 GEORGIA                 | 5TH 823680          | 2           |
| 3 MICHIGAN                | 16TH 802994         | 3           |
| 4 OHIO                    | 3RD 726156          | 4           |
| 5 MARYLAND                | 5TH 711045          | 5           |
| 6 INDIANA                 | 11TH 697567         | 6           |
| 7 MICHIGAN                | 18TH 690259         | 7           |
| 8 CONNECTICUT             | 1ST 689555          | 8           |
| 9 TEXAS                   | 20TH 687151         | 9           |
| 10 OHIO                   | 12TH 682962         | 10          |
| 11 TEXAS                  | 22ND 674965         | 11          |
| 12 MICHIGAN               | 7TH 664556          | 12          |
| 13 ARIZONA                | 1ST 663510          | 13          |
| 14 FLORIDA                | 6TH 660345          | 14          |
| 15 COLORADO               | 2ND 653954          | 15          |
| 16 CONNECTICUT            | 4TH 653589          | 16          |
| 17 TENNESSEE              | 5TH 653310          | 17          |

[fol. 173]

## CONGRESSIONAL

1960

CARD

## DISTRICT

## POPULATIONS

NO.

|                |      |        |
|----------------|------|--------|
| 1 TEXAS        | 5TH  | 951527 |
| 2 GEORGIA      | 5TH  | 823680 |
| 3 MICHIGAN     | 16TH | 802994 |
| 4 OHIO         | 3RD  | 726156 |
| 5 MARYLAND     | 5TH  | 711045 |
| 6 INDIANA      | 11TH | 697567 |
| 7 MICHIGAN     | 18TH | 690259 |
| 8 CONNECTICUT  | 1ST  | 689555 |
| 9 TEXAS        | 20TH | 687151 |
| 10 OHIO        | 12TH | 682962 |
| 11 TEXAS       | 22ND | 674965 |
| 12 MICHIGAN    | 7TH  | 664556 |
| 13 ARIZONA     | 1ST  | 663510 |
| 14 FLORIDA     | 6TH  | 660345 |
| 15 COLORADO    | 2ND  | 653954 |
| 16 CONNECTICUT | 4TH  | 653589 |
| 17 TENNESSEE   | 9TH  | 627019 |
| 18 MICHIGAN    | 6TH  | 623842 |
| 19 MARYLAND    | 2ND  | 621935 |
| 20 KENTUCKY    | 3RD  | 610947 |
| 21 MARYLAND    | 6TH  | 608666 |
| 22 MISSISSIPPI | 2ND  | 608441 |

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| 23 CALIFORNIA   | 28TH | 591822 |
| 24 NEW JERSEY   | 1ST  | 585586 |
| 25 OHIO         | 14TH | 578684 |
| 26 ARKANSAS     | 4TH  | 575385 |
| 27 TEXAS        | 16TH | 573438 |
| 28 UTAH         | 2ND  | 572654 |
| 29 TEXAS        | 8TH  | 568193 |
| 30 ILLINOIS     | 10TH | 557221 |
| 31 NEW JERSEY   | 7TH  | 555555 |
| 32 PENNSYLVANIA | 7TH  | 553154 |
| 33 OKLAHOMA     | 5TH  | 552863 |
| 34 PENNSYLVANIA | 6TH  | 552579 |
| 35 VIRGINIA     | 10TH | 539618 |
| 36 KANSAS       | 1ST  | 539592 |
| 37 TEXAS        | 14TH | 539262 |
| 38 TEXAS        | 12TH | 538495 |
| 39 PENNSYLVANIA | 8TH  | 536103 |
| 40 LOUISIANA    | 6TH  | 536029 |
| 41 CALIFORNIA   | 1ST  | 533807 |
| 42 S. CAROLINA  | 2ND  | 531555 |
| 43 NEBRASKA     | 1ST  | 530507 |
| 44 WISCONSIN    | 2ND  | 530316 |
| 45 OREGON       | 3RD  | 522813 |
| 46 OKLAHOMA     | 1ST  | 521542 |
| 47 WISCONSIN    | 5TH  | 520674 |
| 48 ARKANSAS     | 2ND  | 517860 |

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| 124 N. CAROLINA   | 7TH  | 448933 |
| 125 CALIFORNIA    | 35TH | 447333 |
| 126 KANSAS        | 2ND  | 446621 |
| 127 MINNESOTA     | 3RD  | 445898 |
| 128 ILLINOIS      | 20TH | 445443 |
| 129 NEW YORK      | 19TH | 445175 |
| 130 CALIFORNIA    | 11TH | 444387 |
| 131 S. CAROLINA   | 4TH  | 444230 |
| 132 MASSACHUSETTS | 4TH  | 444069 |
| 133 ILLINOIS      | 23RD | 443553 |
| 134 NEW JERSEY    | 3RD  | 442642 |
| 135 IOWA          | 2ND  | 442406 |
| 136 MASSACHUSETTS | 3RD  | 441558 |
| 137 KANSAS        | 4TH  | 441409 |
| 138 MASSACHUSETTS | 11TH | 441180 |
| 139 ARIZONA       | 2ND  | 440415 |
| 140 PENNSYLVANIA  | 12TH | 439745 |
| 141 FLORIDA       | 11TH | 439578 |
| 142 NEW YORK      | 20TH | 439456 |
| 143 CALIFORNIA    | 6TH  | 439144 |
| 144 ILLINOIS      | 11TH | 439043 |
| 145 MINNESOTA     | 1ST  | 438835 |
| 146 NEW YORK      | 25TH | 438409 |
| 147 NEW YORK      | 8TH  | 438192 |
| 148 MISSOURI      | 7TH  | 436933 |
| 149 NEW YORK      | 41ST | 435880 |
| 150 NEW YORK      | 40TH | 435684 |

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| 30 ILLINOIS     | 10TH | 557221 |
| 31 NEW JERSEY   | 7TH  | 555555 |
| 32 PENNSYLVANIA | 7TH  | 553154 |
| 33 OKLAHOMA     | 5TH  | 552863 |
| 34 PENNSYLVANIA | 6TH  | 552579 |
| 35 VIRGINIA     | 10TH | 539618 |
| 36 KANSAS       | 1ST  | 539592 |
| 37 TEXAS        | 14TH | 539262 |
| 38 TEXAS        | 12TH | 538495 |
| 39 PENNSYLVANIA | 8TH  | 536103 |
| 40 LOUISIANA    | 6TH  | 536029 |
| 41 CALIFORNIA   | 1ST  | 533807 |
| 42 S. CAROLINA  | 2ND  | 531555 |
| 43 NEBRASKA     | 1ST  | 530507 |
| 44 WISCONSIN    | 2ND  | 530316 |
| 45 OREGON       | 3RD  | 522813 |
| 46 OKLAHOMA     | 1ST  | 521542 |
| 47 WISCONSIN    | 5TH  | 520674 |
| 48 ARKANSAS     | 2ND  | 517860 |
| 49 OREGON       | 1ST  | 517678 |
| 50 PENNSYLVANIA | 13TH | 516682 |
| 51 TEXAS        | 15TH | 515716 |
| 52 WISCONSIN    | 4TH  | 515367 |
| 53 INDIANA      | 1ST  | 513269 |
| 54 MICHIGAN     | 17TH | 512752 |

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55 OHIO 11TH 512022  
56 ILLINOIS 4TH 511808  
57 WASHINGTON 7TH 510512  
58 CALIFORNIA 18TH 510341  
59 MISSOURI 2ND 505854  
60 MAINE 2ND 505465  
61 ILLINOIS 14TH 505076  
62 NEW JERSEY 6TH 504255  
63 CALIFORNIA 33RD 503591  
64 ILLINOIS 13TH 503022  
65 CALIFORNIA 3RD 502778  
66 FLORIDA 3RD 500000  
67 LOUISIANA 2ND 499561  
68 TEXAS 9TH 498775  
69 SOUTH DAKOTA 1ST 497669  
70 TENNESSEE 2ND 497121  
71 CALIFORNIA 16TH 496859  
72 VIRGINIA 2ND 494292  
73 COLORADO 1ST 493687  
74 OHIO 16TH 492631  
75 N. CAROLINA 8TH 491461  
76 NEW JERSEY 4TH 490891  
77 PENNSYLVANIA 9TH 488967  
78 OHIO 2ND 488368  
79 ILLINOIS 24TH 487198  
80 N. CAROLINA 6TH 487159

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| 61 ILLINOIS      | 14TH | 505076 |
| 62 NEW JERSEY    | 6TH  | 504255 |
| 63 CALIFORNIA    | 33RD | 503591 |
| 64 ILLINOIS      | 13TH | 503022 |
| 65 CALIFORNIA    | 3RD  | 502778 |
| 66 FLORIDA       | 3RD  | 500000 |
| 67 LOUISIANA     | 2ND  | 499561 |
| 68 TEXAS         | 9TH  | 498775 |
| 69 SOUTH DAKOTA  | 1ST  | 497669 |
| 70 TENNESSEE     | 2ND  | 497121 |
| 71 CALIFORNIA    | 16TH | 496859 |
| 72 VIRGINIA      | 2ND  | 494292 |
| 73 COLORADO      | 1ST  | 493687 |
| 74 OHIO          | 16TH | 492631 |
| 75 N. CAROLINA   | 8TH  | 491461 |
| 76 NEW JERSEY    | 4TH  | 490891 |
| 77 PENNSYLVANIA  | 9TH  | 488967 |
| 78 OHIO          | 2ND  | 488368 |
| 79 ILLINOIS      | 24TH | 487198 |
| 80 N. CAROLINA   | 6TH  | 487159 |
| 81 MICHIGAN      | 2ND  | 483343 |
| 82 FLORIDA       | 4TH  | 482968 |
| 83 MINNESOTA     | 5TH  | 482872 |
| 84 MISSOURI      | 3RD  | 481218 |
| 85 MASSACHUSETTS | 9TH  | 478962 |
| 86 KENTUCKY      | 4TH  | 478783 |

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| 87 NEBRASKA       | 3RD  | 476128 | 087 |
| 88 MINNESOTA      | 4TH  | 474957 | 088 |
| 89 ILLINOIS       | 8TH  | 474503 | 089 |
| 90 INDIANA        | 3RD  | 472958 | 090 |
| 91 NEW YORK       | 12TH | 469908 | 091 |
| 92 NEW YORK       | 14TH | 465889 | 092 |
| 93 MISSOURI       | 1ST  | 465488 | 093 |
| 94 OHIO           | 20TH | 465341 | 094 |
| 95 MAINE          | 1ST  | 463800 | 095 |
| 96 KENTUCKY       | 7TH  | 463275 | 096 |
| 97 CALIFORNIA     | 10TH | 463260 | 097 |
| 98 OREGON         | 4TH  | 463032 | 098 |
| 99 MICHIGAN       | 14TH | 462192 | 099 |
| 100 MICHIGAN      | 5TH  | 461906 | 100 |
| 101 CONNECTICUT   | 3RD  | 461229 | 101 |
| 102 N. CAROLINA   | 4TH  | 460795 | 102 |
| 103 TENNESSEE     | 1ST  | 460583 | 103 |
| 104 NEW YORK      | 30TH | 460409 | 104 |
| 105 MISSISSIPPI   | 3RD  | 460100 | 105 |
| 106 CALIFORNIA    | 34TH | 460087 | 106 |
| 107 RHODE ISLAND  | 2ND  | 459706 | 107 |
| 108 INDIANA       | 5TH  | 459473 | 108 |
| 109 NEW YORK      | 7TH  | 457124 | 109 |
| 110 OHIO          | 9TH  | 456931 | 110 |
| 111 MASSACHUSETTS | 10TH | 456308 | 111 |
| 112 PENNSYLVANIA  | 24TH | 456157 | 112 |

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|-------------------|------|--------|
| 93 MISSOURI       | 1ST  | 465488 |
| 94 OHIO           | 20TH | 465341 |
| 95 MAINE          | 1ST  | 463800 |
| 96 KENTUCKY       | 7TH  | 463275 |
| 97 CALIFORNIA     | 10TH | 463260 |
| 98 OREGON         | 4TH  | 463032 |
| 99 MICHIGAN       | 14TH | 462192 |
| 100 MICHIGAN      | 5TH  | 461906 |
| 101 CONNECTICUT   | 3RD  | 461229 |
| 102 N. CAROLINA   | 4TH  | 460795 |
| 103 TENNESSEE     | 1ST  | 460583 |
| 104 NEW YORK      | 30TH | 460409 |
| 105 MISSISSIPPI   | 3RD  | 460100 |
| 106 CALIFORNIA    | 34TH | 460087 |
| 107 RHODE ISLAND  | 2ND  | 459706 |
| 108 INDIANA       | 5TH  | 459473 |
| 109 NEW YORK      | 7TH  | 457124 |
| 110 OHIO          | 9TH  | 456931 |
| 111 MASSACHUSETTS | 10TH | 456308 |
| 112 PENNSYLVANIA  | 24TH | 456157 |
| 113 FLORIDA       | 2ND  | 455411 |
| 114 NEW YORK      | 13TH | 454285 |
| 115 N. CAROLINA   | 5TH  | 454261 |
| 116 NEW YORK      | 29TH | 453165 |
| 117 MASSACHUSETTS | 6TH  | 452956 |
| 118 MISSOURI      | 8TH  | 452385 |

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| 119 NEW JERSEY    | 9TH  | 451126 | 119 |
| 120 GEORGIA       | 7TH  | 450740 | 120 |
| 121 MASSACHUSETTS | 5TH  | 450716 | 121 |
| 122 MISSISSIPPI   | 5TH  | 449565 | 122 |
| 123 LOUISIANA     | 1ST  | 449491 | 123 |
| 124 N. CAROLINA   | 7TH  | 448933 | 124 |
| 125 CALIFORNIA    | 35TH | 447333 | 125 |
| 126 KANSAS        | 2ND  | 446621 | 126 |
| 127 MINNESOTA     | 3RD  | 445898 | 127 |
| 128 ILLINOIS      | 20TH | 445443 | 128 |
| 129 NEW YORK      | 19TH | 445175 | 129 |
| 130 CALIFORNIA    | 11TH | 444387 | 130 |
| 131 S. CAROLINA   | 4TH  | 444230 | 131 |
| 132 MASSACHUSETTS | 4TH  | 444069 | 132 |
| 133 ILLINOIS      | 23RD | 443553 | 133 |
| 134 NEW JERSEY    | 3RD  | 442642 | 134 |
| 135 IOWA          | 2ND  | 442406 | 135 |
| 136 MASSACHUSETTS | 3RD  | 441558 | 136 |
| 137 KANSAS        | 4TH  | 441409 | 137 |
| 138 MASSACHUSETTS | 11TH | 441180 | 138 |
| 139 ARIZONA       | 2ND  | 440415 | 139 |
| 140 PENNSYLVANIA  | 12TH | 439745 | 140 |
| 141 FLORIDA       | 11TH | 439578 | 141 |
| 142 NEW YORK      | 20TH | 439456 | 142 |
| 143 CALIFORNIA    | 6TH  | 439144 | 143 |
| 144 ILLINOIS      | 11TH | 439043 | 144 |
| 145 MINNESOTA     | 1ST  | 438835 | 145 |

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|-------------------|------|--------|
| 221 RHODE ISLAND  | 1ST  | 399743 |
| 222 TENNESSEE     | 5TH  | 399743 |
| 223 WASHINGTON    | 6TH  | 399362 |
| 224 WASHINGTON    | 5TH  | 399093 |
| 225 CALIFORNIA    | 37TH | 398597 |
| 226 NEW YORK      | 1ST  | 398254 |
| 227 ILLINOIS      | 12TH | 398192 |
| 228 MICHIGAN      | 8TH  | 398106 |
| 229 PENNSYLVANIA  | 2ND  | 397995 |
| 230 MINNESOTA     | 8TH  | 397917 |
| 231 IOWA          | 6TH  | 397877 |
| 232 FLORIDA       | 10TH | 397788 |
| 233 WEST VIRGINIA | 3RD  | 396871 |
| 234 NEW YORK      | 28TH | 396122 |
| 235 ILLINOIS      | 16TH | 395293 |
| 236 NEW YORK      | 4TH  | 394494 |
| 237 INDIANA       | 10TH | 394391 |
| 238 S. CAROLINA   | 6TH  | 394302 |
| 239 NEW JERSEY    | 8TH  | 394279 |
| 240 MISSOURI      | 5TH  | 394263 |
| 241 CALIFORNIA    | 19TH | 393986 |
| 242 ILLINOIS      | 7TH  | 392683 |
| 243 CALIFORNIA    | 22ND | 392600 |
| 244 MASSACHUSETTS | 7TH  | 392350 |
| 245 PENNSYLVANIA  | 5TH  | 392176 |
| 246 LOUISIANA     | 4TH  | 391541 |

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| 151 OHIO          | 7TH  | 435621 |
| 152 NEW YORK      | 39TH | 435393 |
| 153 PENNSYLVANIA  | 25TH | 434552 |
| 154 WISCONSIN     | 1ST  | 434528 |
| 155 NEW JERSEY    | 15TH | 433856 |
| 156 NEW YORK      | 18TH | 431330 |
| 157 CALIFORNIA    | 36TH | 430573 |
| 158 N. CAROLINA   | 3RD  | 430360 |
| 159 ILLINOIS      | 9TH  | 428463 |
| 160 MICHIGAN      | 3RD  | 427899 |
| 161 NEW YORK      | 9TH  | 426771 |
| 162 PENNSYLVANIA  | 26TH | 426035 |
| 163 ILLINOIS      | 3RD  | 425117 |
| 164 TEXAS         | 19TH | 424774 |
| 165 NEW YORK      | 10TH | 424617 |
| 166 INDIANA       | 8TH  | 423929 |
| 167 PENNSYLVANIA  | 27TH | 423787 |
| 168 CALIFORNIA    | 23RD | 423282 |
| 169 NEW YORK      | 34TH | 423028 |
| 170 VIRGINIA      | 1ST  | 422624 |
| 171 GEORGIA       | 3RD  | 422198 |
| 172 WEST VIRGINIA | 4TH  | 422046 |
| 173 OHIO          | 21ST | 421804 |
| 174 S. CAROLINA   | 1ST  | 421478 |
| 175 MASSACHUSETTS | 8TH  | 420596 |
| 176 WASHINGTON    | 1ST  | 420548 |
| 177 TEXAS         | 2ND  | 420402 |

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|-------------------|------|--------|
| 158 N. CAROLINA   | 3RD  | 430360 |
| 159 ILLINOIS      | 9TH  | 428463 |
| 160 MICHIGAN      | 3RD  | 427899 |
| 161 NEW YORK      | 9TH  | 426771 |
| 162 PENNSYLVANIA  | 26TH | 426035 |
| 163 ILLINOIS      | 3RD  | 425117 |
| 164 TEXAS         | 19TH | 424774 |
| 165 NEW YORK      | 10TH | 424617 |
| 166 INDIANA       | 8TH  | 423929 |
| 167 PENNSYLVANIA  | 27TH | 423787 |
| 168 CALIFORNIA    | 23RD | 423282 |
| 169 NEW YORK      | 34TH | 423028 |
| 170 VIRGINIA      | 1ST  | 422624 |
| 171 GEORGIA       | 3RD  | 422198 |
| 172 WEST VIRGINIA | 4TH  | 422046 |
| 173 OHIO          | 21ST | 421804 |
| 174 S. CAROLINA   | 1ST  | 421478 |
| 175 MASSACHUSETTS | 8TH  | 420596 |
| 176 WASHINGTON    | 1ST  | 420548 |
| 177 TEXAS         | 2ND  | 420402 |
| 178 MINNESOTA     | 6TH  | 420235 |
| 179 CALIFORNIA    | 32ND | 419781 |
| 180 PENNSYLVANIA  | 1ST  | 418192 |
| 181 VIRGINIA      | 3RD  | 418081 |
| 182 NEW YORK      | 6TH  | 416600 |

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|-------------------|------|--------|
| 183 NEW YORK      | 33RD | 415353 |
| 184 PENNSYLVANIA  | 19TH | 415058 |
| 185 WASHINGTON    | 4TH  | 414764 |
| 186 TENNESSEE     | 3RD  | 412664 |
| 187 CONNECTICUT   | 2ND  | 411919 |
| 188 WISCONSIN     | 8TH  | 411807 |
| 189 KENTUCKY      | 6TH  | 411545 |
| 190 NEW YORK      | 36TH | 410943 |
| 191 ILLINOIS      | 15TH | 410650 |
| 192 COLORADO      | 3RD  | 410555 |
| 193 NEW YORK      | 37TH | 410432 |
| 194 IDAHO         | 2ND  | 409949 |
| 195 MISSOURI      | 9TH  | 409369 |
| 196 NEW YORK      | 27TH | 409349 |
| 197 PENNSYLVANIA  | 18TH | 409291 |
| 198 CALIFORNIA    | 14TH | 409030 |
| 199 WEST VIRGINIA | 1ST  | 408794 |
| 200 PENNSYLVANIA  | 17TH | 408036 |
| 201 CALIFORNIA    | 24TH | 407654 |
| 202 CALIFORNIA    | 15TH | 407283 |
| 203 PENNSYLVANIA  | 3RD  | 406993 |
| 204 CALIFORNIA    | 2ND  | 406506 |
| 205 FLORIDA       | 7TH  | 405611 |
| 206 NEW JERSEY    | 5TH  | 405533 |
| 207 OKLAHOMA      | 6TH  | 405003 |
| 208 PENNSYLVANIA  | 20TH | 404997 |

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| 188 WISCONSIN     | 8TH  | 411807 |
| 189 KENTUCKY      | 6TH  | 411545 |
| 190 NEW YORK      | 36TH | 410943 |
| 191 ILLINOIS      | 15TH | 410650 |
| 192 COLORADO      | 3RD  | 410555 |
| 193 NEW YORK      | 37TH | 410432 |
| 194 IDAHO         | 2ND  | 409949 |
| 195 MISSOURI      | 9TH  | 409369 |
| 196 NEW YORK      | 27TH | 409349 |
| 197 PENNSYLVANIA  | 18TH | 409291 |
| 198 CALIFORNIA    | 14TH | 409030 |
| 199 WEST VIRGINIA | 1ST  | 408794 |
| 200 PENNSYLVANIA  | 17TH | 408036 |
| 201 CALIFORNIA    | 24TH | 407654 |
| 202 CALIFORNIA    | 15TH | 407283 |
| 203 PENNSYLVANIA  | 3RD  | 406993 |
| 204 CALIFORNIA    | 2ND  | 406506 |
| 205 FLORIDA       | 7TH  | 405611 |
| 206 NEW JERSEY    | 5TH  | 405533 |
| 207 OKLAHOMA      | 6TH  | 405003 |
| 208 PENNSYLVANIA  | 20TH | 404997 |
| 209 MASSACHUSETTS | 12TH | 404969 |
| 210 NEBRASKA      | 2ND  | 404695 |
| 211 N. CAROLINA   | 9TH  | 404093 |
| 212 NEW YORK      | 11TH | 403628 |
| 213 IOWA          | 3RD  | 403442 |
| 214 MISSOURI      | 4TH  | 403217 |

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| 215 IOWA          | 1ST  | 403048 |
| 216 OHIO          | 23RD | 402752 |
| 217 NEW YORK      | 5TH  | 402290 |
| 218 NEW YORK      | 26TH | 402204 |
| 219 MONTANA       | 2ND  | 400573 |
| 220 NEW YORK      | 3RD  | 399767 |
| 221 RHODE ISLAND  | 1ST  | 399782 |
| 222 TENNESSEE     | 5TH  | 399743 |
| 223 WASHINGTON    | 6TH  | 399362 |
| 224 WASHINGTON    | 5TH  | 399093 |
| 225 CALIFORNIA    | 37TH | 398597 |
| 226 NEW YORK      | 1ST  | 398254 |
| 227 ILLINOIS      | 12TH | 398192 |
| 228 MICHIGAN      | 8TH  | 398106 |
| 229 PENNSYLVANIA  | 2ND  | 397995 |
| 230 MINNESOTA     | 8TH  | 397917 |
| 231 IOWA          | 6TH  | 397877 |
| 232 FLORIDA       | 10TH | 397788 |
| 233 WEST VIRGINIA | 3RD  | 396871 |
| 234 NEW YORK      | 28TH | 396122 |
| 235 ILLINOIS      | 16TH | 395293 |
| 236 NEW YORK      | 4TH  | 394494 |
| 237 INDIANA       | 10TH | 394391 |
| 238 S. CAROLINA   | 6TH  | 394302 |
| 239 NEW JERSEY    | 8TH  | 394279 |
| 240 MISSOURI      | 5TH  | 394263 |

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| 247 IOWA          | 5TH  | 391489 | 247 |
| 248 ILLINOIS      | 18TH | 391232 | 248 |
| 249 PENNSYLVANIA  | 14TH | 390512 | 249 |
| 250 N. CAROLINA   | 10TH | 390020 | 250 |
| 251 INDIANA       | 4TH  | 390010 | 251 |
| 252 CALIFORNIA    | 30TH | 389762 | 252 |
| 253 CALIFORNIA    | 25TH | 389625 | 253 |
| 254 TENNESSEE     | 4TH  | 389563 | 254 |
| 255 OHIO          | 23TH | 389312 | 255 |
| 256 CALIFORNIA    | 26TH | 389216 | 256 |
| 257 ILLINOIS      | 1ST  | 388796 | 257 |
| 258 MASSACHUSETTS | 2ND  | 388578 | 258 |
| 259 MISSOURI      | 6TH  | 388486 | 259 |
| 260 LOUISIANA     | 3RD  | 387207 | 260 |
| 261 ILLINOIS      | 17TH | 387204 | 261 |
| 262 PENNSYLVANIA  | 4TH  | 387156 | 262 |
| 263 NEW YORK      | 35TH | 386148 | 263 |
| 264 NEW YORK      | 32ND | 385406 | 264 |
| 265 LOUISIANA     | 7TH  | 384330 | 265 |
| 266 NEW YORK      | 17TH | 382320 | 266 |
| 267 NEW YORK      | 30TH | 382277 | 267 |
| 268 MISSOURI      | 10TH | 381602 | 268 |
| 269 CALIFORNIA    | 9TH  | 381225 | 269 |
| 270 OHIO          | 6TH  | 380847 | 270 |
| 271 CALIFORNIA    | 31ST | 380679 | 271 |
| 272 GEORGIA       | 1ST  | 379933 | 272 |
| 273 CALIFORNIA    | 29TH | 379671 | 273 |
| 274 CALIFORNIA    | 20TH | 379370 | 274 |
| 275 FLORIDA       | 1ST  | 379288 | 275 |
| 276 CALIFORNIA    | 12TH | 379010 | 276 |
| 277 VIRGINIA      | 6TH  | 378864 | 277 |
| 278 CALIFORNIA    | 38TH | 378296 | 278 |

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|-------------------|------|--------|-----|
| 279 OHIO          | 19TH | 378122 | 279 |
| 280 MINNESOTA     | 7TH  | 377675 | 280 |
| 281 FLORIDA       | 5TH  | 377421 | 281 |
| 282 KANSAS        | 3RD  | 377406 | 282 |
| 283 MASSACHUSETTS | 1ST  | 376336 | 283 |
| 284 WISCONSIN     | 6TH  | 376325 | 284 |
| 285 OHIO          | 1ST  | 375753 | 285 |
| 286 OHIO          | 17TH | 375504 | 286 |
| 287 MINNESOTA     | 2ND  | 375475 | 287 |
| 288 FLORIDA       | 12TH | 374655 | 288 |
| 289 CALIFORNIA    | 27TH | 374283 | 289 |
| 290 PENNSYLVANIA  | 10TH | 373894 | 290 |
| 291 ILLINOIS      | 22ND | 373881 | 291 |
| 292 KANSAS        | 5TH  | 373583 | 292 |
| 293 MARYLAND      | 7TH  | 373327 | 293 |
| 294 PENNSYLVANIA  | 23RD | 372941 | 294 |
| 295 CALIFORNIA    | 17TH | 372590 | 295 |
| 296 NEW YORK      | 2ND  | 371950 | 296 |
| 297 ILLINOIS      | 2ND  | 370514 | 297 |
| 298 CALIFORNIA    | 21ST | 369983 | 298 |
| 299 OKLAHOMA      | 2ND  | 368976 | 299 |
| 300 CALIFORNIA    | 8TH  | 368421 | 300 |
| 301 CALIFORNIA    | 13TH | 368100 | 301 |
| 302 MICHIGAN      | 4TH  | 366991 | 302 |
| 303 WASHINGTON    | 2ND  | 366395 | 303 |
| 304 IOWA          | 4TH  | 366119 | 304 |
| 305 KENTUCKY      | 5TH  | 365140 | 305 |
| 306 VIRGINIA      | 9TH  | 364973 | 306 |
| 307 MISSISSIPPI   | 1ST  | 364963 | 307 |
| 308 TEXAS         | 18TH | 363596 | 308 |
| 309 ILLINOIS      | 21ST | 363196 | 309 |
| 310 NEW JERSEY    | 12TH | 362914 | 310 |

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| 311 ILLINOIS     | 5TH  | 362638 |
| 312 NEW YORK     | 21ST | 361770 |
| 313 N. CAROLINA  | 11TH | 361077 |
| 314 ARKANSAS     | 1ST  | 360183 |
| 315 NEW YORK     | 23RD | 358258 |
| 316 PENNSYLVANIA | 22ND | 358173 |
| 317 OHIO         | 22ND | 357998 |
| 318 KENTUCKY     | 2ND. | 357627 |
| 319 VIRGINIA     | 8TH  | 357461 |
| 320 INDIANA      | 2ND  | 357309 |
| 321 OHIO         | 4TH  | 356994 |
| 322 NEW YORK     | 22ND | 355847 |
| 323 PENNSYLVANIA | 16TH | 353564 |
| 324 TEXAS        | 10TH | 353454 |
| 325 NEW YORK     | 31ST | 353183 |
| 326 IOWA         | 7TH  | 353156 |
| 327 PENNSYLVANIA | 21ST | 352629 |
| 328 VIRGINIA     | 4TH  | 352157 |
| 329 NEW YORK     | 16TH | 352024 |
| 330 KENTUCKY     | 1ST  | 350839 |
| 331 ILLINOIS     | 19TH | 350515 |
| 332 N. CAROLINA  | 2ND  | 350135 |
| 333 NEW YORK     | 15TH | 349850 |
| 334 NEW YORK     | 24TH | 348940 |
| 335 GEORGIA      | 10TH | 348379 |
| 336 PENNSYLVANIA | 11TH | 346972 |
| 337 LOUISIANA    | 5TH  | 345013 |
| 338 WASHINGTON   | 3RD  | 342540 |
| 339 CALIFORNIA   | 7TH  | 337603 |
| 340 MICHIGAN     | 15TH | 337017 |
| 341 INDIANA      | 6TH  | 333783 |
| 342 NORTH DAKOTA | 1ST  | 333290 |

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|-------------------|------|--------|-----|
| 343 ARKANSAS      | 3RD  | 332844 | 343 |
| 344 NEW HAMPSHIRE | 1ST  | 331818 | 344 |
| 345 GEORGIA       | 6TH  | 330235 | 345 |
| 346 WEST VIRGINIA | 2ND  | 329612 | 346 |
| 347 INDIANA       | 7TH  | 329213 | 347 |
| 348 OHIO          | 18TH | 328921 | 348 |
| 349 TEXAS         | 13TH | 326781 | 349 |
| 350 VIRGINIA      | 5TH  | 325989 | 350 |
| 351 TENNESSEE     | 6TH  | 324357 | 351 |
| 352 GEORGIA       | 4TH  | 323489 | 352 |
| 353 TEXAS         | 11TH | 322484 | 353 |
| 354 WISCONSIN     | 7TH  | 319547 | 354 |
| 355 CONNECTICUT   | 5TH  | 318942 | 355 |
| 356 S. CAROLINA   | 3RD  | 318809 | 356 |
| 357 UTAH          | 1ST  | 317973 | 357 |
| 358 NEW JERSEY    | 2ND  | 316285 | 358 |
| 359 VIRGINIA      | 7TH  | 312890 | 359 |
| 360 MICHIGAN      | 9TH  | 312854 | 360 |
| 361 CALIFORNIA    | 4TH  | 310651 | 361 |
| 362 MICHIGAN      | 10TH | 308917 | 362 |
| 363 NEW JERSEY    | 11TH | 308660 | 363 |
| 364 WISCONSIN     | 9TH  | 307078 | 364 |
| 365 WEST VIRGINIA | 5TH  | 303098 | 365 |
| 366 NEW JERSEY    | 10TH | 303058 | 366 |
| 367 PENNSYLVANIA  | 15TH | 303026 | 367 |
| 368 CALIFORNIA    | 5TH  | 301172 | 368 |
| 369 GEORGIA       | 2ND  | 301123 | 369 |
| 370 WISCONSIN     | 3RD  | 299265 | 370 |
| 371 NORTH DAKOTA  | 2ND  | 299156 | 371 |
| 372 OHIO          | 5TH  | 298051 | 372 |
| 373 MISSISSIPPI   | 4TH  | 295072 | 373 |
| 374 TEXAS         | 3RD  | 293942 | 374 |

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|-------------------|------|--------|
| 375 GEORGIA       | 8TH  | 291185 |
| 376 OHIO          | 8TH  | 290694 |
| 377 INDIANA       | 9TH  | 290596 |
| 378 TEXAS         | 17TH | 287889 |
| 379 MARYLAND      | 4TH  | 283320 |
| 380 MICHIGAN      | 15T  | 283302 |
| 381 N. CAROLINA   | 1ST  | 277861 |
| 382 ILLINOIS      | 6TH  | 277169 |
| 383 NEW HAMPSHIRE | 2ND  | 275103 |
| 384 OHIO          | 10TH | 274441 |
| 385 MONTANA       | 1ST  | 274194 |
| 386 S. CAROLINA   | 5TH  | 272220 |
| 387 GEORGIA       | 9TH  | 272154 |
| 388 MICHIGAN      | 13TH | 268040 |
| 389 TEXAS         | 7TH  | 265629 |
| 390 OREGON        | 2ND  | 265164 |
| 391 LOUISIANA     | 8TH  | 263850 |
| 392 TEXAS         | 21ST | 262742 |
| 393 MARYLAND      | 3RD  | 258826 |
| 394 IDAHO         | 1ST  | 257242 |
| 395 NEW JERSEY    | 13TH | 256977 |
| 396 NEW JERSEY    | 14TH | 255165 |
| 397 OKLAHOMA      | 4TH  | 252208 |
| 398 TEXAS         | 6TH  | 248149 |
| 399 TEXAS         | 1ST  | 245942 |
| 400 MARYLAND      | 1ST  | 243570 |
| 401 FLORIDA       | 8TH  | 241250 |
| 402 MICHIGAN      | 11TH | 240793 |
| 403 FLORIDA       | 9TH  | 237235 |
| 404 WISCONSIN     | 10TH | 236870 |
| 405 OHIO          | 15TH | 236288 |
| 406 TENNESSEE     | 7TH  | 232652 |

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| 407 OKLAHOMA     | 3RD  | 227692 |
| 408 TENNESSEE    | 8TH  | 223387 |
| 409 TEXAS        | 4TH  | 216371 |
| 410 ARIZONA      | 3RD  | 198236 |
| 411 COLORADO     | 4TH  | 195551 |
| 412 SOUTH DAKOTA | 2ND  | 182845 |
| 413 MICHIGAN     | 12TH | 177431 |

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\*BASED ON DATA CONTAINED IN EXHIBIT A. 22 REPRESENTATIVES WILL BE ELECTED AT-LARGE IN 1962 IN THE FOLLOWING STATES- ALABAMA-8, ALASKA-1, CONNECTICUT-1, DELAWARE-1, HAWAII-2, MARYLAND-1, MICHIGAN-1, NEVADA-1, NEW MEXICO-2, OHIO-1, TEXAS-1, VERMONT-1, AND WYOMING-1. THESE 22 AT-LARGE AREAS ARE NOT INCLUDED IN THIS TABLE.

DEPENDANTS' EXHIBIT 2  
IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA

EXHIBIT D

PERCENTAGE DEVIATIONS OF CONGRESSIONAL DISTRICT POPULATION FROM AVERAGE  
POPULATION PER DISTRICT OF THE STATE\*

DISTRICTS EFFECTIVE JANUARY, 1963 POPULATIONS, 1960--

| STATE        |      | 1960<br>POPULATIONS | AVERAGE<br>POPULATION<br>OF STATES<br>CONGRESSIONAL<br>DISTRICTS | % DEVIATIONS FROM<br>STATE AVERAGE<br>POPULATION PER DISTRICT | CARD<br>NO. |
|--------------|------|---------------------|--|---|-------------|
| 1 ARIZONA    | 1ST  | 663510.             | 434053.  | 52.86%  | 001         |
| 1 ARIZONA    | 2ND  | 440415.             | 434053.  | 1.46%   | 002         |
| 1 ARIZONA    | 3RD  | 198236.             | 434053.  | -54.32%   | 003         |
| 2 ARKANSAS   | 1ST  | 360183.             | 446568.  | -19.34%   | 004         |
| 2 ARKANSAS   | 2ND  | 517860.             | 446568.  | 15.96%  | 005         |
| 2 ARKANSAS   | 3RD  | 332844.             | 446568.  | -25.46%   | 006         |
| 2 ARKANSAS   | 4TH  | 575385.             | 446568.  | 28.84%  | 007         |
| 3 CALIFORNIA | 1ST  | 533807.             | 414009.  | 28.93%  | 008         |
| 3 CALIFORNIA | 2ND  | 406506.             | 414009.  | -1.81%  | 009         |
| 3 CALIFORNIA | 3RD  | 502778.             | 414009.  | 21.44%  | 010         |
| 3 CALIFORNIA | 4TH  | 310651.             | 414009.  | -24.96%   | 011         |
| 3 CALIFORNIA | 5TH  | 301172.             | 414009.  | -27.25%   | 012         |
| 3 CALIFORNIA | 6TH  | 439144.             | 414009.  | 6.07%   | 013         |
| 3 CALIFORNIA | 7TH  | 337603.             | 414009.  | -18.45%   | 014         |
| 3 CALIFORNIA | 8TH  | 368421.             | 414009.  | -11.01%   | 015         |
| 3 CALIFORNIA | 9TH  | 381225.             | 414009.  | -7.91%  | 016         |
| 3 CALIFORNIA | 10TH | 463260.             | 414009.  | 11.89%  | 017         |
| 3 CALIFORNIA | 11TH | 444387.             | 414009.  | 7.33%   | 018         |

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|---------------|------|---------|---------|---------|-----|
| 3 CALIFORNIA  | 12TH | 379010. | 414009. | -8.45%  | 019 |
| 3 CALIFORNIA  | 13TH | 368100. | 414009. | -11.08% | 020 |
| 3 CALIFORNIA  | 14TH | 409030. | 414009. | -1.20%  | 021 |
| 3 CALIFORNIA  | 15TH | 407283. | 414009. | -1.62%  | 022 |
| 3 CALIFORNIA  | 16TH | 496859. | 414009. | 20.01%  | 023 |
| 3 CALIFORNIA  | 17TH | 372590. | 414009. | -10.00% | 024 |
| 3 CALIFORNIA  | 18TH | 510341. | 414009. | 23.26%  | 025 |
| 3 CALIFORNIA  | 19TH | 393986. | 414009. | -4.83%  | 026 |
| 3 CALIFORNIA  | 20TH | 379370. | 414009. | -8.36%  | 027 |
| 3 CALIFORNIA  | 21ST | 369983. | 414009. | -10.63% | 028 |
| 3 CALIFORNIA  | 22ND | 392600. | 414009. | -5.17%  | 029 |
| 3 CALIFORNIA  | 23RD | 423282. | 414009. | 2.23%   | 030 |
| 3 CALIFORNIA  | 24TH | 407654. | 414009. | -1.53%  | 031 |
| 3 CALIFORNIA  | 25TH | 389625. | 414009. | -5.88%  | 032 |
| 3 CALIFORNIA  | 26TH | 389216. | 414009. | -5.98%  | 033 |
| 3 CALIFORNIA  | 27TH | 374283. | 414009. | -9.59%  | 034 |
| 3 CALIFORNIA  | 28TH | 591822. | 414009. | 42.94%  | 035 |
| 3 CALIFORNIA  | 29TH | 379671. | 414009. | -8.29%  | 036 |
| 3 CALIFORNIA  | 30TH | 389762. | 414009. | -5.85%  | 037 |
| 3 CALIFORNIA  | 31ST | 380679. | 414009. | -8.05%  | 038 |
| 3 CALIFORNIA  | 32ND | 419781. | 414009. | 1.39%   | 039 |
| 3 CALIFORNIA  | 33RD | 503591. | 414009. | 21.63%  | 040 |
| 3 CALIFORNIA  | 34TH | 460087. | 414009. | 11.12%  | 041 |
| 3 CALIFORNIA  | 35TH | 447333. | 414009. | 8.04%   | 042 |
| 3 CALIFORNIA  | 36TH | 430573. | 414009. | 4.00%   | 043 |
| 3 CALIFORNIA  | 37TH | 398597. | 414009. | -3.72%  | 044 |
| 3 CALIFORNIA  | 38TH | 378296. | 414009. | -8.62%  | 045 |
| 4 COLORADO    | 1ST  | 493887. | 438486. | 12.63%  | 046 |
| 4 COLORADO    | 2ND  | 653954. | 438486. | 49.13%  | 047 |
| 4 COLORADO    | 3RD  | 410555. | 438486. | -6.37%  | 048 |
| 4 COLORADO    | 4TH  | 195551. | 438486. | -55.40% | 049 |
| 5 CONNECTICUT | 1ST  | 689555. | 507046. | 35.99%  | 050 |



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|---------------|------|---------|---------|---------|-----|
| 5 CONNECTICUT | 2ND  | 411919. | 507046. | -18.76% | 051 |
| 5 CONNECTICUT | 3RD  | 461229. | 507046. | -9.03%  | 052 |
| 5 CONNECTICUT | 4TH  | 653589. | 507046. | 28.90%  | 053 |
| 5 CONNECTICUT | 5TH  | 318942. | 507046. | -37.09% | 054 |
| 6 FLORIDA     | 1ST  | 379288. | 412629. | -8.08%  | 055 |
| 6 FLORIDA     | 2ND  | 455411. | 412629. | 10.36%  | 056 |
| 6 FLORIDA     | 3RD  | 500000. | 412629. | 21.17%  | 057 |
| 6 FLORIDA     | 4TH  | 482968. | 412629. | 17.04%  | 058 |
| 6 FLORIDA     | 5TH  | 377421. | 412629. | -8.53%  | 059 |
| 6 FLORIDA     | 6TH  | 660345. | 412629. | 60.03%  | 060 |
| 6 FLORIDA     | 7TH  | 405611. | 412629. | -1.70%  | 061 |
| 6 FLORIDA     | 8TH  | 241250. | 412629. | -41.53% | 062 |
| 6 FLORIDA     | 9TH  | 237235. | 412629. | -42.50% | 063 |
| 6 FLORIDA     | 10TH | 397788. | 412629. | -3.59%  | 064 |
| 6 FLORIDA     | 11TH | 439578. | 412629. | 6.53%   | 065 |
| 6 FLORIDA     | 12TH | 374655. | 412629. | -9.20%  | 066 |
| 7 GEORGIA     | 1ST  | 379933. | 394311. | -3.64%  | 067 |
| 7 GEORGIA     | 2ND  | 301123. | 394311. | -23.63% | 068 |
| 7 GEORGIA     | 3RD  | 422198. | 394311. | 7.07%   | 069 |
| 7 GEORGIA     | 4TH  | 323489. | 394311. | -17.96% | 070 |
| 7 GEORGIA     | 5TH  | 823680. | 394311. | 108.89% | 071 |
| 7 GEORGIA     | 6TH  | 330235. | 394311. | -16.25% | 072 |
| 7 GEORGIA     | 7TH  | 450740. | 394311. | 14.31%  | 073 |
| 7 GEORGIA     | 8TH  | 291185. | 394311. | -26.15% | 074 |
| 7 GEORGIA     | 9TH  | 272154. | 394311. | -30.97% | 075 |
| 7 GEORGIA     | 10TH | 348379. | 394311. | -11.64% | 076 |
| 8 IDAHO       | 1ST  | 257242. | 333595. | -22.88% | 077 |
| 8 IDAHO       | 2ND  | 409949. | 333595. | 22.88%  | 078 |
| 9 ILLINOIS    | 1ST  | 388796. | 420100. | -7.45%  | 079 |
| 9 ILLINOIS    | 2ND  | 370514. | 420100. | -11.80% | 080 |
| 9 ILLINOIS    | 3RD  | 425117. | 420100. | 1.19%   | 081 |
| 9 ILLINOIS    | 4TH  | 511808. | 420100. | 21.82%  | 082 |



|            |      |         |         |         |     |
|------------|------|---------|---------|---------|-----|
| 9 ILLINOIS | 5TH  | 362638. | 420100. | -13.67% | 083 |
| 9 ILLINOIS | 6TH  | 277169. | 420100. | -34.02% | 084 |
| 9 ILLINOIS | 7TH  | 392683. | 420100. | -6.52%  | 085 |
| 9 ILLINOIS | 8TH  | 474503. | 420100. | 12.94%  | 086 |
| 9 ILLINOIS | 9TH  | 428463. | 420100. | 1.99%   | 087 |
| 9 ILLINOIS | 10TH | 557221. | 420100. | 32.63%  | 088 |
| 9 ILLINOIS | 11TH | 439043. | 420100. | 4.50%   | 089 |
| 9 ILLINOIS | 12TH | 398192. | 420100. | -5.21%  | 090 |
| 9 ILLINOIS | 13TH | 503022. | 420100. | 19.73%  | 091 |
| 9 ILLINOIS | 14TH | 505076. | 420100. | 20.22%  | 092 |
| 9 ILLINOIS | 15TH | 410650. | 420100. | -2.24%  | 093 |
| 9 ILLINOIS | 16TH | 395293. | 420100. | -5.90%  | 094 |
| 9 ILLINOIS | 17TH | 387204. | 420100. | -7.83%  | 095 |
| 9 ILLINOIS | 18TH | 391232. | 420100. | -6.87%  | 096 |
| 9 ILLINOIS | 19TH | 350515. | 420100. | -16.56% | 097 |
| 9 ILLINOIS | 20TH | 445443. | 420100. | 6.03%   | 098 |
| 9 ILLINOIS | 21ST | 363196. | 420100. | -13.54% | 099 |
| 9 ILLINOIS | 22ND | 373881. | 420100. | -11.00% | 100 |
| 9 ILLINOIS | 23RD | 443553. | 420100. | 5.58%   | 101 |
| 9 ILLINOIS | 24TH | 487198. | 420100. | 15.97%  | 102 |
| 10 INDIANA | 1ST  | 513269. | 423863. | 21.09%  | 103 |
| 10 INDIANA | 2ND  | 357309. | 423863. | -15.70% | 104 |
| 10 INDIANA | 3RD  | 472958. | 423863. | 11.58%  | 105 |
| 10 INDIANA | 4TH  | 390010. | 423863. | -7.98%  | 106 |
| 10 INDIANA | 5TH  | 459473. | 423863. | 8.40%   | 107 |
| 10 INDIANA | 6TH  | 333783. | 423863. | -21.25% | 108 |
| 10 INDIANA | 7TH  | 329213. | 423863. | -22.33% | 109 |
| 10 INDIANA | 8TH  | 423929. | 423863. | .01%    | 110 |
| 10 INDIANA | 9TH  | 290596. | 423863. | -31.44% | 111 |
| 10 INDIANA | 10TH | 394391. | 423863. | -6.95%  | 112 |
| 10 INDIANA | 11TH | 697567. | 423863. | 64.57%  | 113 |
| 11 IOWA    | 1ST  | 403048. | 393933. | 2.31%   | 114 |



|              |     |         |         |         |     |
|--------------|-----|---------|---------|---------|-----|
| 11 IOWA      | 2ND | 442406. | 393933. | 12.30%  | 115 |
| 11 IOWA      | 3RD | 403442. | 393933. | 2.41%   | 116 |
| 11 IOWA      | 4TH | 366119. | 393933. | -7.06%  | 117 |
| 11 IOWA      | 5TH | 391489. | 393933. | -.62%   | 118 |
| 11 IOWA      | 6TH | 397877. | 393933. | 1.00%   | 119 |
| 11 IOWA      | 7TH | 353156. | 393933. | -10.35% | 120 |
| 12 KANSAS    | 1ST | 539592. | 435722. | 23.83%  | 121 |
| 12 KANSAS    | 2ND | 446621. | 435722. | 2.50%   | 122 |
| 12 KANSAS    | 3RD | 377406. | 435722. | -13.38% | 123 |
| 12 KANSAS    | 4TH | 441409. | 435722. | 1.30%   | 124 |
| 12 KANSAS    | 5TH | 373583. | 435722. | -14.26% | 125 |
| 13 KENTUCKY  | 1ST | 350839. | 434022. | -19.16% | 126 |
| 13 KENTUCKY  | 2ND | 357627. | 434022. | -17.60% | 127 |
| 13 KENTUCKY  | 3RD | 610947. | 434022. | 40.76%  | 128 |
| 13 KENTUCKY  | 4TH | 478783. | 434022. | 10.31%  | 129 |
| 13 KENTUCKY  | 5TH | 365140. | 434022. | -15.87% | 130 |
| 13 KENTUCKY  | 6TH | 411545. | 434022. | -5.17%  | 131 |
| 13 KENTUCKY  | 7TH | 463275. | 434022. | 6.73%   | 132 |
| 14 LOUISIANA | 1ST | 449491. | 407127. | 10.40%  | 133 |
| 14 LOUISIANA | 2ND | 499561. | 407127. | 22.70%  | 134 |
| 14 LOUISIANA | 3RD | 387207. | 407127. | -4.89%  | 135 |
| 14 LOUISIANA | 4TH | 391541. | 407127. | -3.82%  | 136 |
| 14 LOUISIANA | 5TH | 345013. | 407127. | -15.25% | 137 |
| 14 LOUISIANA | 6TH | 536029. | 407127. | 31.66%  | 138 |
| 14 LOUISIANA | 7TH | 384330. | 407127. | -5.59%  | 139 |
| 14 LOUISIANA | 8TH | 263850. | 407127. | -35.19% | 140 |
| 15 MAINE     | 1ST | 463800. | 484632. | -4.29%  | 141 |
| 15 MAINE     | 2ND | 505465. | 484632. | 4.29%   | 142 |
| 16 MARYLAND  | 1ST | 243570. | 442955. | -45.01% | 143 |
| 16 MARYLAND  | 2ND | 321935. | 442955. | 40.40%  | 144 |
| 16 MARYLAND  | 3RD | 258826. | 442955. | -41.56% | 145 |
| 16 MARYLAND  | 4TH | 283320. | 442955. | -36.03% | 146 |



|                  |      |         |         |         |     |
|------------------|------|---------|---------|---------|-----|
| 16 MARYLAND      | 5TH  | 711045. | 442955. | 60.32%  | 147 |
| 16 MARYLAND      | 6TH  | 608666. | 442955. | 37.41%  | 148 |
| 16 MARYLAND      | 7TH  | 373327. | 442955. | -15.71% | 149 |
| 17 MASSACHUSETTS | 1ST  | 376336. | 429048. | -12.28% | 150 |
| 17 MASSACHUSETTS | 2ND  | 388578. | 429048. | -9.43%  | 151 |
| 17 MASSACHUSETTS | 3RD  | 441558. | 429048. | 2.91%   | 152 |
| 17 MASSACHUSETTS | 4TH  | 444069. | 429048. | 3.50%   | 153 |
| 17 MASSACHUSETTS | 5TH  | 450716. | 429048. | 5.05%   | 154 |
| 17 MASSACHUSETTS | 6TH  | 452956. | 429048. | 5.57%   | 155 |
| 17 MASSACHUSETTS | 7TH  | 392350. | 429048. | -8.55%  | 156 |
| 17 MASSACHUSETTS | 8TH  | 420596. | 429048. | -1.96%  | 157 |
| 17 MASSACHUSETTS | 9TH  | 478962. | 429048. | 11.63%  | 158 |
| 17 MASSACHUSETTS | 10TH | 456308. | 429048. | 6.35%   | 159 |
| 17 MASSACHUSETTS | 11TH | 441180. | 429048. | 2.82%   | 160 |
| 17 MASSACHUSETTS | 12TH | 404969. | 429048. | -5.61%  | 161 |
| 18 MICHIGAN      | 1ST  | 283302. | 434621. | -34.81% | 162 |
| 18 MICHIGAN      | 2ND  | 483343. | 434621. | 11.21%  | 163 |
| 18 MICHIGAN      | 3RD  | 427899. | 434621. | -1.54%  | 164 |
| 18 MICHIGAN      | 4TH  | 366991. | 434621. | -15.56% | 165 |
| 18 MICHIGAN      | 5TH  | 461906. | 434621. | 6.27%   | 166 |
| 18 MICHIGAN      | 6TH  | 623842. | 434621. | 43.53%  | 167 |
| 18 MICHIGAN      | 7TH  | 664556. | 434621. | 52.90%  | 168 |
| 18 MICHIGAN      | 8TH  | 398106. | 434621. | -8.40%  | 169 |
| 18 MICHIGAN      | 9TH  | 312854. | 434621. | -28.01% | 170 |
| 18 MICHIGAN      | 10TH | 308917. | 434621. | -28.92% | 171 |
| 18 MICHIGAN      | 11TH | 240793. | 434621. | -44.59% | 172 |
| 18 MICHIGAN      | 12TH | 177431. | 434621. | -59.17% | 173 |
| 18 MICHIGAN      | 13TH | 268040. | 434621. | -38.32% | 174 |
| 18 MICHIGAN      | 14TH | 462192. | 434621. | 6.34%   | 175 |
| 18 MICHIGAN      | 15TH | 337017. | 434621. | -22.45% | 176 |
| 18 MICHIGAN      | 16TH | 802994. | 434621. | 84.75%  | 177 |
| 18 MICHIGAN      | 17TH | 512752. | 434621. | 17.97%  | 178 |



|                  |      |         |         |         |     |
|------------------|------|---------|---------|---------|-----|
| 18. MICHIGAN     | 18TH | 690259. | 434621. | 58.81%  | 179 |
| 19 MINNESOTA     | 1ST  | 438635. | 426733. | 2.83%   | 180 |
| 19 MINNESOTA     | 2ND  | 375475. | 426733. | -12.01% | 181 |
| 19 MINNESOTA     | 3RD  | 445898. | 426733. | 4.49%   | 182 |
| 19 MINNESOTA     | 4TH  | 474957. | 426733. | 11.30%  | 183 |
| 19 MINNESOTA     | 5TH  | 482872. | 426733. | 13.15%  | 184 |
| 19 MINNESOTA     | 6TH  | 420235. | 426733. | -1.52%  | 185 |
| 19 MINNESOTA     | 7TH  | 377675. | 426733. | -11.49% | 186 |
| 19 MINNESOTA     | 8TH  | 397917. | 426733. | -6.75%  | 187 |
| 20 MISSISSIPPI   | 1ST  | 364963. | 435628. | -16.22% | 188 |
| 20 MISSISSIPPI   | 2ND  | 608441. | 435628. | 39.66%  | 189 |
| 20 MISSISSIPPI   | 3RD  | 460100. | 435628. | 5.61%   | 190 |
| 20 MISSISSIPPI   | 4TH  | 295072. | 435628. | -32.26% | 191 |
| 20 MISSISSIPPI   | 5TH  | 449565. | 435628. | 3.19%   | 192 |
| 21 MISSOURI      | 1ST  | 465486. | 431881. | 7.78%   | 193 |
| 21 MISSOURI      | 2ND  | 505854. | 431881. | 17.12%  | 194 |
| 21 MISSOURI      | 3RD  | 461218. | 431881. | 11.42%  | 195 |
| 21 MISSOURI      | 4TH  | 403217. | 431881. | -6.63%  | 196 |
| 21 MISSOURI      | 5TH  | 394263. | 431881. | -8.71%  | 197 |
| 21 MISSOURI      | 6TH  | 388486. | 431881. | -10.04% | 198 |
| 21 MISSOURI      | 7TH  | 436933. | 431881. | 1.16%   | 199 |
| 21 MISSOURI      | 8TH  | 452385. | 431881. | 4.74%   | 200 |
| 21 MISSOURI      | 9TH  | 409369. | 431881. | -5.21%  | 201 |
| 21 MISSOURI      | 10TH | 381602. | 431881. | -11.64% | 202 |
| 22 MONTANA       | 1ST  | 274194. | 337383. | -18.72% | 203 |
| 22 MONTANA       | 2ND  | 400573. | 337383. | 18.72%  | 204 |
| 23 NEBRASKA      | 1ST  | 530507. | 470443. | 12.76%  | 205 |
| 23 NEBRASKA      | 2ND  | 404695. | 470443. | -13.97% | 206 |
| 23 NEBRASKA      | 3RD  | 476128. | 470443. | 1.20%   | 207 |
| 24 NEW HAMPSHIRE | 1ST  | 331816. | 303460. | 9.34%   | 208 |
| 24 NEW HAMPSHIRE | 2ND  | 275103. | 303460. | -9.34%  | 209 |
| 25 NEW JERSEY    | 1ST  | 585586. | 404452. | 44.73%  | 210 |

|                |      |         |         |         |     |
|----------------|------|---------|---------|---------|-----|
| 26 NEW YORK    | 19TH | 445175. | 409324. | 8.75%   | 243 |
| 26 NEW YORK    | 20TH | 439456. | 409324. | 7.36%   | 244 |
| 26 NEW YORK    | 21ST | 361770. | 409324. | -11.61% | 245 |
| 26 NEW YORK    | 22ND | 399847. | 409324. | -13.06% | 246 |
| 26 NEW YORK    | 23RD | 358258. | 409324. | -12.47% | 247 |
| 26 NEW YORK    | 24TH | 348940. | 409324. | -14.75% | 248 |
| 26 NEW YORK    | 25TH | 438409. | 409324. | 7.10%   | 249 |
| 26 NEW YORK    | 26TH | 402204. | 409324. | -1.73%  | 250 |
| 26 NEW YORK    | 27TH | 409349. | 409324. | .00%    | 251 |
| 26 NEW YORK    | 28TH | 396122. | 409324. | -3.22%  | 252 |
| 26 NEW YORK    | 29TH | 453165. | 409324. | 10.71%  | 253 |
| 26 NEW YORK    | 30TH | 460409. | 409324. | 12.48%  | 254 |
| 26 NEW YORK    | 31ST | 353183. | 409324. | -13.71% | 255 |
| 26 NEW YORK    | 32ND | 385406. | 409324. | -5.84%  | 256 |
| 26 NEW YORK    | 33RD | 415333. | 409324. | 1.46%   | 257 |
| 26 NEW YORK    | 34TH | 423028. | 409324. | 3.34%   | 258 |
| 26 NEW YORK    | 35TH | 386148. | 409324. | -5.66%  | 259 |
| 26 NEW YORK    | 36TH | 410943. | 409324. | .39%    | 260 |
| 26 NEW YORK    | 37TH | 410432. | 409324. | .27%    | 261 |
| 26 NEW YORK    | 38TH | 382277. | 409324. | -6.60%  | 262 |
| 26 NEW YORK    | 39TH | 435393. | 409324. | 6.36%   | 263 |
| 26 NEW YORK    | 40TH | 435684. | 409324. | 6.43%   | 264 |
| 26 NEW YORK    | 41ST | 435880. | 409324. | 6.48%   | 265 |
| 27 N. CAROLINA | 1ST  | 277861. | 414195. | -32.91% | 266 |
| 27 N. CAROLINA | 2ND  | 350135. | 414195. | -15.46% | 267 |
| 27 N. CAROLINA | 3RD  | 430360. | 414195. | 3.90%   | 268 |
| 27 N. CAROLINA | 4TH  | 460795. | 414195. | 11.25%  | 269 |
| 27 N. CAROLINA | 5TH  | 454261. | 414195. | 9.67%   | 270 |
| 27 N. CAROLINA | 6TH  | 487159. | 414195. | 17.61%  | 271 |
| 27 N. CAROLINA | 7TH  | 448933. | 414195. | 8.38%   | 272 |
| 27 N. CAROLINA | 8TH  | 491461. | 414195. | 18.65%  | 273 |
| 27 N. CAROLINA | 9TH  | 404093. | 414195. | -2.43%  | 274 |



|                 |      |         |         |         |     |
|-----------------|------|---------|---------|---------|-----|
| 27 N. CAROLINA  | 10TH | 390020. | 414195. | -5.83%  | 275 |
| 27 N. CAROLINA  | 11TH | 361077. | 414195. | -12.82% | 276 |
| 28 NORTH DAKOTA | 1ST  | 333290. | 316223. | 5.39%   | 277 |
| 28 NORTH DAKOTA | 2ND  | 299156. | 316223. | -5.39%  | 278 |
| 29 OHIO         | 1ST  | 375753. | 422017. | -10.96% | 279 |
| 29 OHIO         | 2ND  | 488368. | 422017. | 15.72%  | 280 |
| 29 OHIO         | 3RD  | 726156. | 422017. | 72.06%  | 281 |
| 29 OHIO         | 4TH  | 356994. | 422017. | -15.40% | 282 |
| 29 OHIO         | 5TH  | 298051. | 422017. | -29.37% | 283 |
| 29 OHIO         | 6TH  | 380847. | 422017. | -9.25%  | 284 |
| 29 OHIO         | 7TH  | 435621. | 422017. | 3.22%   | 285 |
| 29 OHIO         | 8TH  | 290694. | 422017. | -31.11% | 286 |
| 29 OHIO         | 9TH  | 456931. | 422017. | 8.27%   | 287 |
| 29 OHIO         | 10TH | 274441. | 422017. | -34.96% | 288 |
| 29 OHIO         | 11TH | 512022. | 422017. | 21.32%  | 289 |
| 29 OHIO         | 12TH | 682962. | 422017. | 61.83%  | 290 |
| 29 OHIO         | 13TH | 389312. | 422017. | -7.74%  | 291 |
| 29 OHIO         | 14TH | 578884. | 422017. | 37.17%  | 292 |
| 29 OHIO         | 15TH | 236288. | 422017. | -44.00% | 293 |
| 29 OHIO         | 16TH | 492631. | 422017. | 16.73%  | 294 |
| 29 OHIO         | 17TH | 375504. | 422017. | -11.02% | 295 |
| 29 OHIO         | 18TH | 328521. | 422017. | -22.05% | 296 |
| 29 OHIO         | 19TH | 378122. | 422017. | -10.40% | 297 |
| 29 OHIO         | 20TH | 465341. | 422017. | 10.20%  | 298 |
| 29 OHIO         | 21ST | 421804. | 422017. | -.05%   | 299 |
| 29 OHIO         | 22ND | 351990. | 422017. | -15.16% | 300 |
| 29 OHIO         | 23RD | 402122. | 422017. | -4.56%  | 301 |
| 30 OKLAHOMA     | 1ST  | 521542. | 388047. | 34.40%  | 302 |
| 30 OKLAHOMA     | 2ND  | 368976. | 388047. | -4.91%  | 303 |
| 30 OKLAHOMA     | 3RD  | 227692. | 388047. | -41.32% | 304 |
| 30 OKLAHOMA     | 4TH  | 252208. | 388047. | -35.00% | 305 |
| 30 OKLAHOMA     | 5TH  | 552863. | 388047. | 42.47%  | 306 |

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|                 |      |         |         |         |     |
|-----------------|------|---------|---------|---------|-----|
| 30 OKLAHOMA     | 6TH  | 405003. | 388047. | 4.36%   | 307 |
| 31 OREGON       | 1ST  | 517678. | 442171. | 17.07%  | 308 |
| 31 OREGON       | 2ND  | 265164. | 442171. | -40.03% | 309 |
| 31 OREGON       | 3RD  | 522813. | 442171. | 18.23%  | 310 |
| 31 OREGON       | 4TH  | 463032. | 442171. | 4.71%   | 311 |
| 32 PENNSYLVANIA | 1ST  | 418192. | 419235. | -.24%   | 312 |
| 32 PENNSYLVANIA | 2ND  | 397995. | 419235. | -5.00%  | 313 |
| 32 PENNSYLVANIA | 3RD  | 406993. | 419235. | -2.92%  | 314 |
| 32 PENNSYLVANIA | 4TH  | 387156. | 419235. | -7.65%  | 315 |
| 32 PENNSYLVANIA | 5TH  | 392176. | 419235. | -6.45%  | 316 |
| 32 PENNSYLVANIA | 6TH  | 552579. | 419235. | 31.80%  | 317 |
| 32 PENNSYLVANIA | 7TH  | 553154. | 419235. | 31.94%  | 318 |
| 32 PENNSYLVANIA | 8TH  | 536103. | 419235. | 27.87%  | 319 |
| 32 PENNSYLVANIA | 9TH  | 488767. | 419235. | 16.63%  | 320 |
| 32 PENNSYLVANIA | 10TH | 373894. | 419235. | -10.81% | 321 |
| 32 PENNSYLVANIA | 11TH | 346972. | 419235. | -17.23% | 322 |
| 32 PENNSYLVANIA | 12TH | 439795. | 419235. | 4.89%   | 323 |
| 32 PENNSYLVANIA | 13TH | 516682. | 419235. | 23.24%  | 324 |
| 32 PENNSYLVANIA | 14TH | 390512. | 419235. | -6.85%  | 325 |
| 32 PENNSYLVANIA | 15TH | 303026. | 419235. | -27.71% | 326 |
| 32 PENNSYLVANIA | 16TH | 353664. | 419235. | -15.66% | 327 |
| 32 PENNSYLVANIA | 17TH | 408036. | 419235. | -2.67%  | 328 |
| 32 PENNSYLVANIA | 18TH | 409291. | 419235. | -2.37%  | 329 |
| 32 PENNSYLVANIA | 19TH | 415058. | 419235. | -.99%   | 330 |
| 32 PENNSYLVANIA | 20TH | 404997. | 419235. | -3.39%  | 331 |
| 32 PENNSYLVANIA | 21ST | 352629. | 419235. | -15.88% | 332 |
| 32 PENNSYLVANIA | 22ND | 358173. | 419235. | -14.56% | 333 |
| 32 PENNSYLVANIA | 23RD | 372941. | 419235. | -11.04% | 334 |
| 32 PENNSYLVANIA | 24TH | 456157. | 419235. | 8.80%   | 335 |
| 32 PENNSYLVANIA | 25TH | 434552. | 419235. | 3.65%   | 336 |
| 32 PENNSYLVANIA | 26TH | 426035. | 419235. | 1.62%   | 337 |
| 32 PENNSYLVANIA | 27TH | 423787. | 419235. | 1.08%   | 338 |



|                 |      |         |         |         |     |
|-----------------|------|---------|---------|---------|-----|
| 33 RHODE ISLAND | 1ST  | 399782. | 429744. | -6.97%  | 339 |
| 33 RHODE ISLAND | 2ND  | 459706. | 429744. | 6.97%   | 340 |
| 34 S. CAROLINA  | 1ST  | 421478. | 397099. | 6.13%   | 341 |
| 34 S. CAROLINA  | 2ND  | 531555. | 397099. | 33.85%  | 342 |
| 34 S. CAROLINA  | 3RD  | 318809. | 397099. | -19.71% | 343 |
| 34 S. CAROLINA  | 4TH  | 444230. | 397099. | 11.86%  | 344 |
| 34 S. CAROLINA  | 5TH  | 272220. | 397099. | -31.44% | 345 |
| 34 S. CAROLINA  | 6TH  | 394302. | 397099. | -.70%   | 346 |
| 35 SOUTH DAKOTA | 1ST  | 497669. | 340257. | 46.26%  | 347 |
| 35 SOUTH DAKOTA | 2ND  | 182845. | 340257. | -46.26% | 348 |
| 36 TENNESSEE    | 1ST  | 460583. | 396343. | 16.20%  | 349 |
| 36 TENNESSEE    | 2ND  | 497121. | 396343. | 25.42%  | 350 |
| 36 TENNESSEE    | 3RD  | 412664. | 396343. | 4.11%   | 351 |
| 36 TENNESSEE    | 4TH  | 389563. | 396343. | -1.71%  | 352 |
| 36 TENNESSEE    | 5TH  | 399743. | 396343. | .85%    | 353 |
| 36 TENNESSEE    | 6TH  | 324357. | 396343. | -18.16% | 354 |
| 36 TENNESSEE    | 7TH  | 232652. | 396343. | -41.30% | 355 |
| 36 TENNESSEE    | 8TH  | 223387. | 396343. | -43.63% | 356 |
| 36 TENNESSEE    | 9TH  | 627019. | 396343. | 57.20%  | 357 |
| 37 TEXAS        | 1ST  | 245942. | 435439. | -43.51% | 358 |
| 37 TEXAS        | 2ND  | 420402. | 435439. | -3.45%  | 359 |
| 37 TEXAS        | 3RD  | 293942. | 435439. | -32.49% | 360 |
| 37 TEXAS        | 4TH  | 216371. | 435439. | -50.30% | 361 |
| 37 TEXAS        | 5TH  | 951527. | 435439. | 118.52% | 362 |
| 37 TEXAS        | 6TH  | 248149. | 435439. | -43.01% | 363 |
| 37 TEXAS        | 7TH  | 265629. | 435439. | -38.99% | 364 |
| 37 TEXAS        | 8TH  | 568193. | 435439. | 30.48%  | 365 |
| 37 TEXAS        | 9TH  | 498775. | 435439. | 14.54%  | 366 |
| 37 TEXAS        | 10TH | 353454. | 435439. | -18.82% | 367 |
| 37 TEXAS        | 11TH | 322484. | 435439. | -25.94% | 368 |
| 37 TEXAS        | 12TH | 538495. | 435439. | 23.66%  | 369 |
| 37 TEXAS        | 13TH | 326781. | 435439. | -24.95% | 370 |

[fol. 198]



|                  |      |         |         |         |     |
|------------------|------|---------|---------|---------|-----|
| 37 TEXAS         | 14TH | 539262. | 435439. | 23.84%  | 371 |
| 37 TEXAS         | 15TH | 515716. | 435439. | 18.43%  | 372 |
| 37 TEXAS         | 16TH | 573438. | 435439. | 31.69%  | 373 |
| 37 TEXAS         | 17TH | 287889. | 435439. | -33.88% | 374 |
| 37 TEXAS         | 18TH | 363596. | 435439. | -16.49% | 375 |
| 37 TEXAS         | 19TH | 424774. | 435439. | -2.44%  | 376 |
| 37 TEXAS         | 20TH | 607151. | 435439. | 57.80%  | 377 |
| 37 TEXAS         | 21ST | 262742. | 435439. | -39.66% | 378 |
| 37 TEXAS         | 22ND | 674965. | 435439. | 55.00%  | 379 |
| 38 UTAH          | 1ST  | 317973. | 445313. | -28.59% | 380 |
| 38 UTAH          | 2ND  | 572654. | 445313. | 28.59%  | 381 |
| 39 VIRGINIA      | 1ST  | 422624. | 396694. | 6.53%   | 382 |
| 39 VIRGINIA      | 2ND  | 494292. | 396694. | 24.60%  | 383 |
| 39 VIRGINIA      | 3RD  | 418081. | 396694. | 5.39%   | 384 |
| 39 VIRGINIA      | 4TH  | 352157. | 396694. | -11.22% | 385 |
| 39 VIRGINIA      | 5TH  | 325989. | 396694. | -17.82% | 386 |
| 39 VIRGINIA      | 6TH  | 378864. | 396694. | -4.49%  | 387 |
| 39 VIRGINIA      | 7TH  | 312890. | 396694. | -21.12% | 388 |
| 39 VIRGINIA      | 8TH  | 357461. | 396694. | -9.89%  | 389 |
| 39 VIRGINIA      | 9TH  | 364973. | 396694. | -7.99%  | 390 |
| 39 VIRGINIA      | 10TH | 539618. | 396694. | 36.02%  | 391 |
| 40 WASHINGTON    | 1ST  | 420548. | 407602. | 3.17%   | 392 |
| 40 WASHINGTON    | 2ND  | 366395. | 407602. | -10.10% | 393 |
| 40 WASHINGTON    | 3RD  | 342540. | 407602. | -15.96% | 394 |
| 40 WASHINGTON    | 4TH  | 414764. | 407602. | 1.75%   | 395 |
| 40 WASHINGTON    | 5TH  | 399093. | 407602. | -2.08%  | 396 |
| 40 WASHINGTON    | 6TH  | 399362. | 407602. | -2.02%  | 397 |
| 40 WASHINGTON    | 7TH  | 510512. | 407602. | 25.24%  | 398 |
| 41 WEST VIRGINIA | 1ST  | 408794. | 372084. | 9.86%   | 399 |
| 41 WEST VIRGINIA | 2ND  | 329612. | 372084. | -11.41% | 400 |
| 41 WEST VIRGINIA | 3RD  | 396871. | 372084. | 6.66%   | 401 |
| 41 WEST VIRGINIA | 4TH  | 422046. | 372084. | 13.42%  | 402 |

[fol. 199]

|                  |      |         |         |         |     |
|------------------|------|---------|---------|---------|-----|
| 41 WEST VIRGINIA | 5TH  | 303098. | 372004. | -18.54% | 403 |
| 42 WISCONSIN     | 1ST  | 434528. | 395177. | 9.95%   | 404 |
| 42 WISCONSIN     | 2ND  | 530316. | 395177. | 34.19%  | 405 |
| 42 WISCONSIN     | 3RD  | 299265. | 395177. | -24.27% | 406 |
| 42 WISCONSIN     | 4TH  | 515367. | 395177. | 30.41%  | 407 |
| 42 WISCONSIN     | 5TH  | 520674. | 395177. | 31.75%  | 408 |
| 42 WISCONSIN     | 6TH  | 376325. | 395177. | -4.77%  | 409 |
| 42 WISCONSIN     | 7TH  | 319547. | 395177. | -19.13% | 410 |
| 42 WISCONSIN     | 8TH  | 411807. | 395177. | 4.20%   | 411 |
| 42 WISCONSIN     | 9TH  | 307078. | 395177. | -22.29% | 412 |
| 42 WISCONSIN     | 10TH | 236670. | 395177. | -40.05% | 413 |

\*CALCULATIONS MADE FROM DATA CONTAINED IN EXHIBIT A. THE FOLLOWING EIGHT STATES ARE NOT INCLUDED, SINCE THEY WILL ELECT THEIR CONGRESSMEN ON AN AT-LARGE BASIS IN 1962- ALABAMA, ALASKA, DELAWARE, HAWAII, NEVADA, NEW MEXICO, VERMONT, AND WYOMING.



DEFENDANT'S EXHIBIT B  
IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
EXHIBIT E

CONGRESSIONAL DISTRICTS WITH POPULATION EXCEEDING STATE AVERAGE RANKED ACCORDING  
TO % DEVIATION ABOVE AVERAGE\*

DISTRICTS EFFECTIVE JANUARY, 1963 POPULATIONS, 1960--

| CONGRESSIONAL<br>DISTRICT |      | 1960<br>POPULATIONS | AVERAGE<br>POPULATION<br>OF STATES<br>CONGRESSIONAL<br>DISTRICTS | %<br>DEVIATION<br>ABOVE<br>STATES<br>AVERAGE | CARD<br>NO. |
|---------------------------|------|---------------------|--|--|-------------|
| 1 TEXAS                   | 5TH  | 751527.             | 435439.  | 118.52%                                      | 362         |
| 2 GEORGIA                 | 5TH  | 823680.             | 394311.  | 108.89%                                      | 071         |
| 3 MICHIGAN                | 16TH | 802994.             | 434621.  | 84.75%                                       | 177         |
| 4 OHIO                    | 3RD  | 726156.             | 422017.  | 72.06%                                       | 281         |
| 5 INDIANA                 | 11TH | 697567.             | 425863.  | 64.57%                                       | 113         |
| 6 OHIO                    | 12TH | 682962.             | 422017.  | 61.83%                                       | 290         |
| 7 MARYLAND                | 5TH  | 711045.             | 442955.  | 60.52%                                       | 147         |
| 8 FLORIDA                 | 6TH  | 660345.             | 412629.  | 60.03%                                       | 060         |
| 9 MICHIGAN                | 18TH | 690259.             | 434621.  | 58.81%                                       | 179         |
| 10 TENNESSEE              | 9TH  | 627019.             | 396343.  | 58.20%                                       | 357         |
| 11 TEXAS                  | 20TH | 687151.             | 435439.  | 57.80%                                       | 377         |
| 12 TEXAS                  | 22ND | 674965.             | 435439.  | 55.00%                                       | 379         |
| 13 MICHIGAN               | 7TH  | 664556.             | 434621.  | 52.90%                                       | 168         |
| 14 ARIZONA                | 1ST  | 663510.             | 434053.  | 52.86%                                       | 001         |
| 15 COLORADO               | 2ND  | 653954.             | 438486.  | 49.13%                                       | 047         |
| 16 SOUTH DAKOTA           | 1ST  | 497669.             | 340257.  | 46.26%                                       | 347         |
| 17 NEW JERSEY             | 1ST  | 585586.             | 404452.  | 44.78%                                       | 210         |
| 18 MICHIGAN               | 6TH  | 623842.             | 434621.  | 43.53%                                       | 167         |

[fol. 201]



|                 |      |         |         |        |     |
|-----------------|------|---------|---------|--------|-----|
| 19 CALIFORNIA   | 28TH | 591822. | 414009. | 42.94% | 035 |
| 20 OKLAHOMA     | 5TH  | 552863. | 388047. | 42.47% | 306 |
| 21 KENTUCKY     | 3RD  | 610947. | 434022. | 40.76% | 128 |
| 22 MARYLAND     | 2ND  | 621935. | 442955. | 40.40% | 144 |
| 23 MISSISSIPPI  | 2ND  | 608441. | 435628. | 39.66% | 189 |
| 24 MARYLAND     | 6TH  | 608666. | 442955. | 37.41% | 148 |
| 25 NEW JERSEY   | 7TH  | 555555. | 404452. | 37.35% | 216 |
| 26 OHIO         | 14TH | 578884. | 422017. | 37.17% | 292 |
| 27 VIRGINIA     | 10TH | 539618. | 396694. | 36.02% | 391 |
| 28 CONNECTICUT  | 1ST  | 689555. | 507046. | 35.99% | 050 |
| 29 OKLAHOMA     | 1ST  | 521542. | 386047. | 34.40% | 302 |
| 30 WISCONSIN    | 2ND  | 530316. | 395177. | 34.19% | 405 |
| 31 S. CAROLINA  | 2ND  | 531555. | 397099. | 33.85% | 342 |
| 32 ILLINOIS     | 10TH | 557221. | 420100. | 32.63% | 088 |
| 33 PENNSYLVANIA | 7TH  | 553154. | 419235. | 31.94% | 318 |
| 34 PENNSYLVANIA | 6TH  | 552579. | 419235. | 31.80% | 317 |
| 35 WISCONSIN    | 5TH  | 520674. | 395177. | 31.75% | 408 |
| 36 TEXAS        | 16TH | 573438. | 435439. | 31.69% | 373 |
| 37 LOUISIANA    | 6TH  | 536029. | 407127. | 31.66% | 738 |
| 38 TEXAS        | 8TH  | 568193. | 435439. | 30.48% | 365 |
| 39 WISCONSIN    | 4TH  | 515367. | 395177. | 30.41% | 407 |
| 40 CALIFORNIA   | 1ST  | 533807. | 414009. | 28.93% | 008 |
| 41 CONNECTICUT  | 4TH  | 653589. | 507046. | 28.90% | 053 |
| 42 ARKANSAS     | 4TH  | 575385. | 446568. | 28.84% | 007 |
| 43 UTAH         | 2ND  | 572654. | 445313. | 28.59% | 381 |
| 44 PENNSYLVANIA | 8TH  | 536103. | 419235. | 27.87% | 319 |
| 45 TENNESSEE    | 2ND  | 497121. | 396343. | 25.42% | 350 |
| 46 WASHINGTON   | 7TH  | 510512. | 407602. | 25.24% | 398 |
| 47 NEW JERSEY   | 6TH  | 504255. | 404452. | 24.67% | 215 |
| 48 VIRGINIA     | 2ND  | 494292. | 396694. | 24.60% | 383 |
| 49 TEXAS        | 14TH | 539262. | 435439. | 23.84% | 371 |
| 50 KANSAS       | 1ST  | 539592. | 435722. | 23.83% | 121 |

[fol. 202]

|                 |      |         |         |        |     |
|-----------------|------|---------|---------|--------|-----|
| 51 TEXAS        | 12TH | 538495. | 435439. | 23.66% | 369 |
| 52 CALIFORNIA   | 18TH | 510341. | 414009. | 23.26% | 025 |
| 53 PENNSYLVANIA | 13TH | 516682. | 419235. | 23.24% | 324 |
| 54 IDAHO        | 2ND  | 409949. | 333595. | 22.88% | 078 |
| 55 LOUISIANA    | 2ND  | 499561. | 407127. | 22.70% | 134 |
| 56 ILLINOIS     | 4TH  | 511808. | 420100. | 21.82% | 082 |
| 57 CALIFORNIA   | 33RD | 503591. | 414009. | 21.63% | 040 |
| 58 CALIFORNIA   | 3RD  | 502778. | 414009. | 21.44% | 010 |
| 59 NEW JERSEY   | 4TH  | 490891. | 404452. | 21.37% | 213 |
| 60 OHIO         | 11TH | 512022. | 422017. | 21.32% | 239 |
| 61 FLORIDA      | 3RD  | 500000. | 412629. | 21.17% | Q57 |
| 62 INDIANA      | 1ST  | 513269. | 423863. | 21.09% | 103 |
| 63 ILLINOIS     | 14TH | 505076. | 420100. | 20.22% | 092 |
| 64 CALIFORNIA   | 16TH | 496859. | 414009. | 20.01% | 023 |
| 65 ILLINOIS     | 13TH | 503022. | 420100. | 19.73% | 091 |
| 66 MONTANA      | 2ND  | 400573. | 337383. | 18.72% | 204 |
| 67 N. CAROLINA  | 8TH  | 491461. | 414195. | 18.65% | 273 |
| 68 TEXAS        | 15TH | 515716. | 435439. | 18.43% | 372 |
| 69 OREGON       | 3RD  | 522813. | 442171. | 18.23% | 310 |
| 70 MICHIGAN     | 17TH | 512752. | 434621. | 17.97% | 178 |
| 71 N. CAROLINA  | 6TH  | 487159. | 414195. | 17.61% | 271 |
| 72 MISSOURI     | 2ND  | 505854. | 431851. | 17.12% | 194 |
| 73 OREGON       | 1ST  | 517678. | 442171. | 17.07% | 308 |
| 74 FLORIDA      | 4TH  | 482968. | 412629. | 17.04% | 058 |
| 75 OHIO         | 16TH | 492631. | 422017. | 16.73% | 294 |
| 76 PENNSYLVANIA | 9TH  | 488967. | 419235. | 16.63% | 320 |
| 77 TENNESSEE    | 1ST  | 460583. | 396343. | 16.20% | 349 |
| 78 ILLINOIS     | 24TH | 487198. | 420100. | 15.97% | 102 |
| 79 ARKANSAS     | 2ND  | 517860. | 446568. | 15.96% | 005 |
| 80 OHIO         | 2ND  | 488368. | 422017. | 15.72% | 280 |
| 81 NEW YORK     | 12TH | 469908. | 409324. | 14.80% | 236 |
| 82 TEXAS        | 9TH  | 498775. | 435439. | 14.54% | 366 |

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|                   |      |         |         |        |     |
|-------------------|------|---------|---------|--------|-----|
| 83 GEORGIA        | 7TH  | 450740. | 394311. | 14.31% | 073 |
| 84 NEW YORK       | 14TH | 465889. | 409324. | 13.81% | 238 |
| 85 WEST VIRGINIA  | 4TH  | 422046. | 372084. | 13.42% | 402 |
| 86 MINNESOTA      | 5TH  | 482872. | 426733. | 13.15% | 184 |
| 87 ILLINOIS       | 8TH  | 474503. | 420100. | 12.94% | 086 |
| 88 NEBRASKA       | 1ST  | 530507. | 470443. | 12.76% | 205 |
| 89 COLORADO       | 1ST  | 493887. | 438486. | 12.63% | 046 |
| 90 NEW YORK       | 30TH | 460409. | 409324. | 12.48% | 254 |
| 91 IOWA           | 2ND  | 442406. | 393933. | 12.30% | 115 |
| 92 CALIFORNIA     | 10TH | 463260. | 414009. | 11.89% | 017 |
| 93 S. CAROLINA    | 4TH  | 444230. | 397099. | 11.86% | 344 |
| 94 NEW YORK       | 7TH  | 457124. | 409324. | 11.67% | 231 |
| 95 MASSACHUSETTS  | 9TH  | 478962. | 429048. | 11.63% | 158 |
| 96 INDIANA        | 3RD  | 472958. | 423863. | 11.58% | 105 |
| 97 NEW JERSEY     | 9TH  | 451126. | 404452. | 11.54% | 218 |
| 98 MISSOURI       | 3RD  | 481218. | 431881. | 11.42% | 175 |
| 99 MINNESOTA      | 4TH  | 474957. | 426733. | 11.30% | 183 |
| 100 N. CAROLINA   | 4TH  | 460795. | 414195. | 11.25% | 269 |
| 101 MICHIGAN      | 2ND  | 483343. | 434621. | 11.21% | 163 |
| 102 CALIFORNIA    | 34TH | 460087. | 414009. | 11.12% | 041 |
| 103 NEW YORK      | 13TH | 454285. | 409324. | 10.98% | 237 |
| 104 NEW YORK      | 29TH | 453165. | 409324. | 10.71% | 253 |
| 105 LOUISIANA     | 1ST  | 449491. | 407127. | 10.40% | 133 |
| 106 FLORIDA       | 2ND  | 455411. | 412629. | 10.36% | 056 |
| 107 KENTUCKY      | 4TH  | 478783. | 434022. | 10.31% | 129 |
| 108 OHIO          | 20TH | 465341. | 422017. | 10.26% | 298 |
| 109 WISCONSIN     | 1ST  | 434528. | 395177. | 9.95%  | 404 |
| 110 WEST VIRGINIA | 1ST  | 408794. | 372084. | 9.86%  | 399 |
| 111 N. CAROLINA   | 5TH  | 454261. | 414195. | 9.67%  | 270 |
| 112 NEW JERSEY    | 3RD  | 442642. | 404452. | 9.44%  | 212 |
| 113 NEW HAMPSHIRE | 1ST  | 331818. | 303460. | 9.34%  | 208 |
| 114 PENNSYLVANIA  | 24TH | 456157. | 419235. | 8.80%  | 335 |

[fol. 204]



|                   |      |         |         |       |     |
|-------------------|------|---------|---------|-------|-----|
| 115 NEW YORK      | 19TH | 445175. | 409324. | 8.75% | 243 |
| 116 INDIANA       | 5TH  | 459473. | 423863. | 8.40% | 107 |
| 117 N. CAROLINA   | 7TH  | 448933. | 414195. | 8.38% | 272 |
| 118 OHIO          | 9TH  | 456931. | 422017. | 8.27% | 287 |
| 119 CALIFORNIA    | 35TH | 447333. | 414009. | 8.04% | 042 |
| 120 MISSOURI      | 1ST  | 465486. | 431881. | 7.78% | 193 |
| 121 NEW YORK      | 20TH | 439456. | 409324. | 7.36% | 244 |
| 122 CALIFORNIA    | 11TH | 444387. | 414009. | 7.33% | 018 |
| 123 NEW JERSEY    | 15TH | 433856. | 404452. | 7.27% | 224 |
| 124 NEW YORK      | 25TH | 438409. | 409324. | 7.10% | 249 |
| 125 GEORGIA       | 3RD  | 422198. | 394311. | 7.07% | 069 |
| 126 NEW YORK      | 8TH  | 438192. | 409324. | 7.05% | 232 |
| 127 RHODE ISLAND  | 2ND  | 459706. | 425744. | 6.97% | 340 |
| 128 KENTUCKY      | 7TH  | 463275. | 434022. | 6.73% | 132 |
| 129 WEST VIRGINIA | 3RD  | 396871. | 372084. | 6.66% | 401 |
| 130 FLORIDA       | 11TH | 439578. | 412629. | 6.53% | 065 |
| 131 VIRGINIA      | 1ST  | 422624. | 396694. | 6.53% | 382 |
| 132 NEW YORK      | 41ST | 435680. | 409324. | 6.48% | 265 |
| 133 NEW YORK      | 40TH | 435684. | 409324. | 6.43% | 264 |
| 134 NEW YORK      | 39TH | 435393. | 409324. | 6.36% | 263 |
| 135 MASSACHUSETTS | 10TH | 456308. | 429048. | 6.35% | 159 |
| 136 MICHIGAN      | 14TH | 462192. | 434621. | 6.34% | 175 |
| 137 MICHIGAN      | 5TH  | 461906. | 434621. | 6.27% | 166 |
| 138 S. CAROLINA   | 1ST  | 421478. | 397099. | 6.13% | 341 |
| 139 CALIFORNIA    | 6TH  | 439144. | 414009. | 6.07% | 013 |
| 140 ILLINOIS      | 20TH | 445443. | 420100. | 6.03% | 098 |
| 141 MISSISSIPPI   | 3RD  | 460100. | 435628. | 5.61% | 190 |
| 142 ILLINOIS      | 23RD | 443553. | 420100. | 5.58% | 101 |
| 143 MASSACHUSETTS | 6TH  | 452956. | 429048. | 5.57% | 155 |
| 144 NORTH DAKOTA  | 1ST  | 333290. | 316223. | 5.39% | 277 |
| 145 VIRGINIA      | 3RD  | 418081. | 396694. | 5.39% | 384 |
| 146 NEW YORK      | 18TH | 431330. | 409324. | 5.37% | 242 |



|                   |      |         |         |       |     |
|-------------------|------|---------|---------|-------|-----|
| 147 MASSACHUSETTS | 5TH  | 450716. | 429048. | 5.05% | 154 |
| 148 PENNSYLVANIA  | 12TH | 49745.  | 419235. | 4.89% | 323 |
| 149 MISSOURI      | 8TH  | 452385. | 431881. | 4.74% | 200 |
| 150 OREGON        | 4TH  | 463032. | 442171. | 4.71% | 311 |
| 151 ILLINOIS      | 11TH | 439043. | 420100. | 4.50% | 089 |
| 152 MINNESOTA     | 3RD  | 445898. | 426733. | 4.49% | 182 |
| 153 OKLAHOMA      | 6TH  | 405003. | 388047. | 4.36% | 307 |
| 154 MAINE         | 2ND  | 505465. | 484632. | 4.29% | 142 |
| 155 NEW YORK      | 9TH  | 426771. | 409324. | 4.26% | 233 |
| 156 WISCONSIN     | 8TH  | 411807. | 395177. | 4.20% | 411 |
| 157 TENNESSEE     | 3RD  | 412664. | 396343. | 4.11% | 351 |
| 158 CALIFORNIA    | 36TH | 430573. | 414009. | 4.00% | 043 |
| 159 N. CAROLINA   | 3RD  | 430360. | 414195. | 3.90% | 268 |
| 160 NEW YORK      | 10TH | 424617. | 409324. | 3.73% | 234 |
| 161 PENNSYLVANIA  | 25TH | 434552. | 419235. | 3.65% | 336 |
| 162 MASSACHUSETTS | 4TH  | 444667. | 429048. | 3.50% | 153 |
| 163 NEW YORK      | 34TH | 423028. | 407324. | 3.34% | 258 |
| 164 OHIO          | 7TH  | 435621. | 422017. | 3.22% | 285 |
| 165 MISSISSIPPI   | 5TH  | 449565. | 435628. | 3.19% | 192 |
| 166 WASHINGTON    | 1ST  | 420548. | 407602. | 3.17% | 392 |
| 167 MASSACHUSETTS | 3RD  | 441558. | 429048. | 2.91% | 152 |
| 168 MINNESOTA     | 1ST  | 438835. | 426733. | 2.83% | 180 |
| 169 MASSACHUSETTS | 11TH | 441180. | 429048. | 2.82% | 160 |
| 170 KANSAS        | 2ND  | 446621. | 435722. | 2.50% | 122 |
| 171 IOWA          | 3RD  | 403442. | 393933. | 2.41% | 116 |
| 172 IOWA          | 1ST  | 403048. | 393933. | 2.31% | 114 |
| 173 CALIFORNIA    | 23RD | 423282. | 414009. | 2.23% | 030 |
| 174 ILLINOIS      | 9TH  | 428463. | 420100. | 1.99% | 087 |
| 175 NEW YORK      | 6TH  | 416600. | 409324. | 1.77% | 230 |
| 176 WASHINGTON    | 4TH  | 414764. | 407602. | 1.75% | 395 |
| 177 PENNSYLVANIA  | 26TH | 426035. | 419235. | 1.62% | 337 |
| 178 ARIZONA       | 2ND  | 440415. | 434053. | 1.46% | 002 |

[fol. 206]



|                  |      |         |         |       |     |
|------------------|------|---------|---------|-------|-----|
| 179 NEW YORK     | 33RD | 415333. | 409324. | 1.46% | 257 |
| 180 CALIFORNIA   | 32ND | 419781. | 414009. | 1.39% | 039 |
| 181 KANSAS       | 4TH  | 441409. | 435722. | 1.30% | 124 |
| 182 NEBRASKA     | 3RD  | 476128. | 470443. | 1.20% | 207 |
| 183 ILLINOIS     | 3RD  | 425117. | 420100. | 1.19% | 081 |
| 184 MISSOURI     | 7TH  | 436533. | 431881. | 1.16% | 199 |
| 185 PENNSYLVANIA | 27TH | 423787. | 419235. | 1.08% | 338 |
| 186 IOWA         | 6TH  | 397877. | 393933. | 1.00% | 119 |
| 187 TENNESSEE    | 5TH  | 399743. | 396343. | .85%  | 353 |
| 188 NEW YORK     | 36TH | 410943. | 409324. | .39%  | 260 |
| 189 NEW YORK     | 37TH | 410432. | 409324. | .27%  | 261 |
| 190 NEW JERSEY   | 5TH  | 405533. | 404452. | .26%  | 214 |
| 191 INDIANA      | 8TH  | 423929. | 423863. | .01%  | 110 |
| 192 NEW YORK     | 27TH | 409349. | 409324. | .00%  | 251 |

\*CALCULATED FROM DATA GIVEN IN EXHIBIT A. THE 22 AT-LARGE AREAS ARE NOT INCLUDED.

[fol. 207]



IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA

EXHIBIT F

CONGRESSIONAL DISTRICTS WITH POPULATION LESS THAN STATE AVERAGE RANKED ACCORDING  
TO % DEVIATION BELOW AVERAGE\*

DISTRICTS EFFECTIVE JANUARY, 1963 POPULATIONS, 1960--

| CONGRESSIONAL<br>DISTRICT | 1960<br>POPULATIONS | AVERAGE<br>POPULATION<br>OF STATES<br>CONGRESSIONAL<br>DISTRICTS | %<br>DEVIATION<br>BELOW<br>STATES<br>AVERAGE | CARD<br>NO. |
|---------------------------|---------------------|--|--|-------------|
| 1 MICHIGAN                | 12TH 177431.        | 434621.  | -59.17%                                      | 173         |
| 2 COLORADO                | 4TH 195551.         | 438486.  | -55.40%                                      | 049         |
| 3 ARIZONA                 | 3RD 198236.         | 434053.  | -54.32%                                      | 003         |
| 4 TEXAS                   | 4TH 216371.         | 435439.  | -50.30%                                      | 361         |
| 5 SOUTH DAKOTA            | 2ND 182845.         | 342257.  | -46.26%                                      | 348         |
| 6 MARYLAND                | 1ST 243570.         | 442955.  | -45.01%                                      | 143         |
| 7 MICHIGAN                | 11TH 240793.        | 434621.  | -44.59%                                      | 172         |
| 8 OHIO                    | 15TH 236288.        | 422017.  | -44.00%                                      | 293         |
| 9 TENNESSEE               | 8TH 223387.         | 396343.  | -43.63%                                      | 356         |
| 10 TEXAS                  | 1ST 245942.         | 435439.  | -43.51%                                      | 358         |
| 11 TEXAS                  | 6TH 248149.         | 435439.  | -43.01%                                      | 363         |
| 12 FLORIDA                | 9TH 237235.         | 412629.  | -42.50%                                      | 063         |
| 13 MARYLAND               | 3RD 258826.         | 442955.  | -41.56%                                      | 145         |
| 14 FLORIDA                | 8TH 241250.         | 412629.  | -41.53%                                      | 062         |
| 15 OKLAHOMA               | 3RD 227692.         | 388047.  | -41.32%                                      | 304         |
| 16 TENNESSEE              | 7TH 232652.         | 396343.  | -41.30%                                      | 355         |
| 17 WISCONSIN              | 10TH 236870.        | 395177.  | -40.05%                                      | 413         |
| 18 OREGON                 | 2ND 265164.         | 442171.  | -40.03%                                      | 309         |

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|                 |      |         |         |         |     |
|-----------------|------|---------|---------|---------|-----|
| 19 TEXAS        | 21ST | 262742. | 435439. | -39.66% | 378 |
| 20 TEXAS        | 7TH  | 265629. | 435439. | -38.99% | 364 |
| 21 MICHIGAN     | 13TH | 268040. | 434621. | -38.32% | 174 |
| 22 CONNECTICUT  | 5TH  | 318942. | 507046. | -37.09% | 054 |
| 23 NEW JERSEY   | 14TH | 255165. | 404452. | -36.91% | 223 |
| 24 NEW JERSEY   | 13TH | 256977. | 404452. | -36.46% | 222 |
| 25 MARYLAND     | 4TH  | 283320. | 442955. | -36.03% | 146 |
| 26 LOUISIANA    | 8TH  | 263850. | 407127. | -35.19% | 140 |
| 27 OKLAHOMA     | 4TH  | 252208. | 388047. | -35.00% | 305 |
| 28 OHIO         | 10TH | 274411. | 422017. | -34.96% | 288 |
| 29 MICHIGAN     | 1ST  | 283302. | 434621. | -34.81% | 162 |
| 30 ILLINOIS     | 6TH  | 277169. | 420100. | -34.02% | 084 |
| 31 TEXAS        | 17TH | 287889. | 435439. | -33.88% | 374 |
| 32 N. CAROLINA  | 1ST  | 277861. | 414195. | -32.91% | 266 |
| 33 TEXAS        | 3RD  | 293942. | 435439. | -32.49% | 360 |
| 34 MISSISSIPPI  | 4TH  | 295072. | 435628. | -32.26% | 191 |
| 35 INDIANA      | 9TH  | 290596. | 423863. | -31.44% | 111 |
| 36 S. CAROLINA  | 5TH  | 272220. | 397099. | -31.44% | 345 |
| 37 OHIO         | 8TH  | 290694. | 422017. | -31.11% | 286 |
| 38 GEORGIA      | 9TH  | 272154. | 394311. | -30.97% | 075 |
| 39 OHIO         | 5TH  | 298051. | 422017. | -29.37% | 283 |
| 40 MICHIGAN     | 10TH | 308917. | 434621. | -28.92% | 171 |
| 41 UTAH         | 1ST  | 317973. | 445313. | -28.59% | 380 |
| 42 MICHIGAN     | 9TH  | 312854. | 434621. | -28.01% | 170 |
| 43 PENNSYLVANIA | 15TH | 303026. | 419235. | -27.71% | 326 |
| 44 CALIFORNIA   | 5TH  | 301172. | 414009. | -27.25% | 012 |
| 45 GEORGIA      | 8TH  | 291185. | 394311. | -26.15% | 074 |
| 46 TEXAS        | 11TH | 322484. | 435439. | -25.94% | 368 |
| 47 ARKANSAS     | 3RD  | 332844. | 446568. | -25.46% | 006 |
| 48 NEW JERSEY   | 10TH | 303058. | 404452. | -25.06% | 219 |
| 49 CALIFORNIA   | 4TH  | 310651. | 414009. | -24.96% | 011 |
| 50 TEXAS        | 13TH | 326781. | 435439. | -24.95% | 370 |

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|                  |      |         |         |         |     |
|------------------|------|---------|---------|---------|-----|
| 51 WISCONSIN     | 3RD  | 299265. | 395177. | -24.27% | 406 |
| 52 NEW JERSEY    | 11TH | 308660. | 404452. | -23.68% | 220 |
| 53 GEORGIA       | 2ND  | 301123. | 394311. | -23.63% | 068 |
| 54 IDAHO         | 1ST  | 257242. | 333595. | -22.88% | 077 |
| 55 MICHIGAN      | 15TH | 337017. | 434621. | -22.45% | 176 |
| 56 INDIANA       | 7TH  | 329213. | 423863. | -22.33% | 109 |
| 57 WISCONSIN     | 9TH  | 307078. | 395177. | -22.29% | 412 |
| 58 OHIO          | 18TH | 328921. | 422017. | -22.05% | 296 |
| 59 NEW JERSEY    | 2ND  | 316285. | 404452. | -21.79% | 211 |
| 60 INDIANA       | 6TH  | 333783. | 423863. | -21.25% | 108 |
| 61 VIRGINIA      | 7TH  | 312890. | 396694. | -21.12% | 388 |
| 62 S. CAROLINA   | 3RD  | 318809. | 397099. | -19.71% | 343 |
| 63 ARKANSAS      | 1ST  | 360183. | 446568. | -19.34% | 004 |
| 64 KENTUCKY      | 1ST  | 350839. | 434022. | -19.16% | 126 |
| 65 WISCONSIN     | 7TH  | 319547. | 395177. | -19.13% | 410 |
| 66 TEXAS         | 10TH | 353454. | 435439. | -18.82% | 367 |
| 67 CONNECTICUT   | 2ND  | 411919. | 507046. | -18.76% | 081 |
| 68 MONTANA       | 1ST  | 274194. | 337363. | -18.72% | 203 |
| 69 WEST VIRGINIA | 5TH  | 303098. | 372064. | -18.54% | 403 |
| 70 CALIFORNIA    | 7TH  | 337603. | 414009. | -18.45% | 014 |
| 71 TENNESSEE     | 6TH  | 324357. | 396343. | -18.16% | 354 |
| 72 GEORGIA       | 4TH  | 323489. | 394311. | -17.96% | 070 |
| 73 VIRGINIA      | 5TH  | 325989. | 396694. | -17.82% | 386 |
| 74 KENTUCKY      | 2ND  | 357627. | 434022. | -17.60% | 127 |
| 75 PENNSYLVANIA  | 11TH | 346972. | 419235. | -17.23% | 322 |
| 76 ILLINOIS      | 12TH | 350515. | 420100. | -16.56% | 097 |
| 77 TEXAS         | 18TH | 363596. | 435439. | -16.49% | 375 |
| 78 GEORGIA       | 6TH  | 330235. | 394311. | -16.25% | 072 |
| 79 MISSISSIPPI   | 1ST  | 364963. | 435628. | -16.22% | 188 |
| 80 WASHINGTON    | 3RD  | 342540. | 407602. | -15.96% | 394 |
| 81 PENNSYLVANIA  | 21ST | 352629. | 419235. | -15.88% | 332 |
| 82 KENTUCKY      | 5TH  | 365140. | 434022. | -15.87% | 130 |

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|                   |      |         |         |         |     |
|-------------------|------|---------|---------|---------|-----|
| 83 MARYLAND       | 7TH  | 373327. | 442955. | -15.71% | 149 |
| 84 INDIANA        | 2ND  | 357309. | 423863. | -15.70% | 104 |
| 85 PENNSYLVANIA   | 16TH | 353564. | 419235. | -15.66% | 327 |
| 86 MICHIGAN       | 4TH  | 366991. | 434621. | -15.56% | 165 |
| 87 N. CAROLINA    | 2ND  | 350135. | 414195. | -15.46% | 267 |
| 88 OHIO           | 4TH  | 356994. | 422017. | -15.40% | 282 |
| 89 LOUISIANA      | 5TH  | 345013. | 407127. | -15.29% | 137 |
| 90 OHIO           | 22ND | 357998. | 422017. | -15.16% | 300 |
| 91 NEW YORK       | 24TH | 348940. | 409324. | -14.75% | 248 |
| 92 PENNSYLVANIA   | 22ND | 358173. | 419235. | -14.56% | 333 |
| 93 NEW YORK       | 15TH | 349850. | 409324. | -14.52% | 239 |
| 94 KANSAS         | 5TH  | 373583. | 435722. | -14.26% | 125 |
| 95 NEW YORK       | 16TH | 352024. | 409324. | -13.99% | 240 |
| 96 NEBRASKA       | 2ND  | 404695. | 470443. | -13.97% | 206 |
| 97 NEW YORK       | 31ST | 353183. | 409324. | -13.71% | 255 |
| 98 ILLINOIS       | 5TH  | 362638. | 420100. | -13.67% | 083 |
| 99 ILLINOIS       | 21ST | 363196. | 420100. | -13.54% | 099 |
| 100 KANSAS        | 3RD  | 377406. | 435722. | -13.38% | 123 |
| 101 NEW YORK      | 22ND | 355847. | 409324. | -13.06% | 246 |
| 102 N. CAROLINA   | 11TH | 361077. | 414195. | -12.82% | 276 |
| 103 NEW YORK      | 23RD | 358258. | 409324. | -12.47% | 247 |
| 104 MASSACHUSETTS | 1ST  | 376336. | 429048. | -12.28% | 150 |
| 105 MINNESOTA     | 2ND  | 375475. | 426733. | -12.01% | 181 |
| 106 ILLINOIS      | 2ND  | 370514. | 420100. | -11.80% | 080 |
| 107 GEORGIA       | 10TH | 348379. | 394311. | -11.64% | 076 |
| 108 MISSOURI      | 10TH | 381602. | 431881. | -11.64% | 202 |
| 109 NEW YORK      | 21ST | 361770. | 409324. | -11.61% | 245 |
| 110 MINNESOTA     | 7TH  | 377675. | 426733. | -11.49% | 186 |
| 111 WEST VIRGINIA | 2ND  | 329612. | 372084. | -11.41% | 400 |
| 112 VIRGINIA      | 4TH  | 352157. | 396694. | -11.22% | 385 |
| 113 CALIFORNIA    | 13TH | 368100. | 414009. | -11.08% | 020 |
| 114 PENNSYLVANIA  | 23RD | 372941. | 419235. | -11.04% | 334 |

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|                   |      |         |         |         |     |
|-------------------|------|---------|---------|---------|-----|
| 115 OHIO          | 17TH | 375504. | 422017. | -11.02% | 295 |
| 116 CALIFORNIA    | 8TH  | 368421. | 414009. | -11.01% | 015 |
| 117 ILLINOIS      | 22ND | 373881. | 420100. | -11.00% | 100 |
| 118 OHIO          | 1ST  | 375753. | 422017. | -10.96% | 279 |
| 119 PENNSYLVANIA  | 10TH | 373894. | 419235. | -10.81% | 321 |
| 120 CALIFORNIA    | 21ST | 369983. | 414009. | -10.63% | 028 |
| 121 OHIO          | 19TH | 378122. | 422017. | -10.40% | 297 |
| 122 IOWA          | 7TH  | 353156. | 393933. | -10.35% | 120 |
| 123 NEW JERSEY    | 12TH | 362914. | 404452. | -10.27% | 221 |
| 124 WASHINGTON    | 2ND  | 366395. | 407602. | -10.10% | 393 |
| 125 MISSOURI      | 6TH  | 388486. | 431881. | -10.04% | 198 |
| 126 CALIFORNIA    | 17TH | 372590. | 414009. | -10.00% | 024 |
| 127 VIRGINIA      | 8TH  | 357461. | 396694. | -9.89%  | 389 |
| 128 OHIO          | 6TH  | 380847. | 422017. | -9.75%  | 284 |
| 129 CALIFORNIA    | 27TH | 374283. | 414009. | -9.59%  | 034 |
| 130 MASSACHUSETTS | 2ND  | 388578. | 429048. | -9.43%  | 151 |
| 131 NEW HAMPSHIRE | 2ND  | 275103. | 303460. | -9.34%  | 209 |
| 132 FLORIDA       | 12TH | 374655. | 412629. | -9.20%  | 066 |
| 133 NEW YORK      | 2ND  | 371950. | 409324. | -9.13%  | 226 |
| 134 CONNECTICUT   | 3RD  | 461229. | 507046. | -9.03%  | 052 |
| 135 MISSOURI      | 5TH  | 394263. | 431881. | -8.71%  | 197 |
| 136 CALIFORNIA    | 38TH | 378296. | 414009. | -8.62%  | 045 |
| 137 MASSACHUSETTS | 7TH  | 392350. | 429048. | -8.55%  | 156 |
| 138 FLORIDA       | 5TH  | 377421. | 412629. | -8.53%  | 059 |
| 139 CALIFORNIA    | 12TH | 379010. | 414009. | -8.45%  | 019 |
| 140 MICHIGAN      | 8TH  | 398106. | 434621. | -8.40%  | 169 |
| 141 CALIFORNIA    | 20TH | 379370. | 414009. | -8.36%  | 027 |
| 142 CALIFORNIA    | 29TH | 379671. | 414009. | -8.29%  | 036 |
| 143 FLORIDA       | 1ST  | 379288. | 412629. | -8.08%  | 055 |
| 144 CALIFORNIA    | 31ST | 380679. | 414009. | -8.05%  | 038 |
| 145 VIRGINIA      | 9TH  | 364973. | 396694. | -7.99%  | 390 |
| 146 INDIANA       | 4TH  | 390010. | 423863. | -7.98%  | 106 |

[fol. 212]



|                   |      |         |         |        |     |
|-------------------|------|---------|---------|--------|-----|
| 147 CALIFORNIA    | 9TH  | 381225. | 414009. | -7.91% | 016 |
| 148 ILLINOIS      | 17TH | 387204. | 420100. | -7.83% | 095 |
| 149 OHIO          | 13TH | 389312. | 422117. | -7.74% | 291 |
| 150 PENNSYLVANIA  | 4TH  | 387156. | 419235. | -7.65% | 315 |
| 151 ILLINOIS      | 1ST  | 388796. | 420100. | -7.45% | 079 |
| 152 IOWA          | 4TH  | 366119. | 393933. | -7.06% | 117 |
| 153 RHODE ISLAND  | 1ST  | 399782. | 429744. | -6.97% | 339 |
| 154 INDIANA       | 10TH | 394391. | 423863. | -6.95% | 112 |
| 155 ILLINOIS      | 18TH | 391232. | 420100. | -6.87% | 096 |
| 156 PENNSYLVANIA  | 14TH | 390512. | 419235. | -6.85% | 325 |
| 157 MINNESOTA     | 8TH  | 397917. | 426733. | -6.75% | 187 |
| 158 MISSOURI      | 4TH  | 403217. | 431881. | -6.63% | 196 |
| 159 NEW YORK      | 38TH | 382277. | 409324. | -6.60% | 262 |
| 160 NEW YORK      | 17TH | 382320. | 409324. | -6.59% | 241 |
| 161 ILLINOIS      | 7TH  | 392683. | 420100. | -6.52% | 085 |
| 162 PENNSYLVANIA  | 5TH  | 392176. | 419235. | -6.45% | 316 |
| 163 COLORADO      | 3RD  | 410555. | 438486. | -6.37% | 048 |
| 164 CALIFORNIA    | 26TH | 389216. | 414009. | -5.98% | 033 |
| 165 ILLINOIS      | 16TH | 395293. | 420100. | -5.90% | 094 |
| 166 CALIFORNIA    | 25TH | 389625. | 414009. | -5.88% | 032 |
| 167 CALIFORNIA    | 30TH | 389762. | 414009. | -5.85% | 037 |
| 168 NEW YORK      | 32ND | 385406. | 409324. | -5.84% | 256 |
| 169 N. CAROLINA   | 10TH | 390020. | 414195. | -5.83% | 275 |
| 170 NEW YORK      | 35TH | 386148. | 409324. | -5.66% | 259 |
| 171 MASSACHUSETTS | 12TH | 404969. | 429048. | -5.61% | 161 |
| 172 LOUISIANA     | 7TH  | 384330. | 407127. | -5.59% | 139 |
| 173 NORTH DAKOTA  | 2ND  | 299156. | 316223. | -5.39% | 278 |
| 174 ILLINOIS      | 12TH | 398192. | 420100. | -5.21% | 090 |
| 175 MISSOURI      | 9TH  | 409369. | 431881. | -5.21% | 201 |
| 176 CALIFORNIA    | 22ND | 392600. | 414009. | -5.17% | 029 |
| 177 KENTUCKY      | 6TH  | 411545. | 434022. | -5.17% | 131 |
| 178 PENNSYLVANIA  | 2ND  | 397995. | 419235. | -5.06% | 313 |

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|                   |      |         |         |        |     |
|-------------------|------|---------|---------|--------|-----|
| 179 OKLAHOMA      | 2ND  | 368976. | 388047. | -4.91% | 303 |
| 180 LOUISIANA     | 3RD  | 387207. | 407127. | -4.89% | 135 |
| 181 CALIFORNIA    | 19TH | 393986. | 414009. | -4.83% | 026 |
| 182 WISCONSIN     | 6TH  | 376325. | 395177. | -4.77% | 409 |
| 183 OHIO          | 23RD | 402752. | 422017. | -4.56% | 301 |
| 184 VIRGINIA      | 6TH  | 378864. | 396694. | -4.49% | 387 |
| 185 MAINE         | 1ST  | 463800. | 484632. | -4.29% | 141 |
| 186 LOUISIANA     | 4TH  | 391541. | 407127. | -3.82% | 136 |
| 187 CALIFORNIA    | 37TH | 398597. | 414009. | -3.72% | 044 |
| 188 GEORGIA       | 1ST  | 379933. | 394311. | -3.64% | 067 |
| 189 NEW YORK      | 4TH  | 394494. | 409324. | -3.62% | 228 |
| 190 FLORIDA       | 10TH | 397788. | 412629. | -3.59% | 064 |
| 191 TEXAS         | 2ND  | 420402. | 435439. | -3.45% | 359 |
| 192 PENNSYLVANIA  | 20TH | 404997. | 419235. | -3.39% | 331 |
| 193 NEW YORK      | 28TH | 396122. | 409324. | -3.22% | 252 |
| 194 PENNSYLVANIA  | 3RD  | 406993. | 419235. | -2.92% | 314 |
| 195 NEW YORK      | 1ST  | 398254. | 409324. | -2.70% | 225 |
| 196 PENNSYLVANIA  | 17TH | 408036. | 419235. | -2.67% | 328 |
| 197 NEW JERSEY    | 8TH  | 394279. | 404452. | -2.51% | 217 |
| 198 TEXAS         | 19TH | 424774. | 435439. | -2.44% | 376 |
| 199 N. CAROLINA   | 9TH  | 404093. | 414195. | -2.43% | 274 |
| 200 PENNSYLVANIA  | 18TH | 409291. | 419235. | -2.37% | 329 |
| 201 NEW YORK      | 3RD  | 399967. | 409324. | -2.28% | 227 |
| 202 ILLINOIS      | 15TH | 410650. | 420100. | -2.24% | 093 |
| 203 WASHINGTON    | 5TH  | 399093. | 407602. | -2.08% | 396 |
| 204 WASHINGTON    | 6TH  | 399362. | 407602. | -2.02% | 397 |
| 205 MASSACHUSETTS | 8TH  | 420596. | 429048. | -1.96% | 157 |
| 206 CALIFORNIA    | 2ND  | 406506. | 414009. | -1.81% | 009 |
| 207 NEW YORK      | 26TH | 402204. | 409324. | -1.73% | 250 |
| 208 NEW YORK      | 5TH  | 402290. | 409324. | -1.71% | 229 |
| 209 TENNESSEE     | 4TH  | 389563. | 396343. | -1.71% | 352 |
| 210 FLORIDA       | 7TH  | 405611. | 412629. | -1.70% | 061 |

[fol. 214]

|                  |      |         |         |        |     |
|------------------|------|---------|---------|--------|-----|
| 211 CALIFORNIA   | 15TH | 407283. | 414009. | -1.62% | 022 |
| 212 MICHIGAN     | 3RD  | 427899. | 434621. | -1.54% | 164 |
| 213 CALIFORNIA   | 24TH | 407654. | 414009. | -1.53% | 31  |
| 214 MINNESOTA    | 6TH  | 420235. | 426733. | -1.52% | 185 |
| 215 NEW YORK     | 11TH | 403628. | 409324. | -1.39% | 235 |
| 216 CALIFORNIA   | 14TH | 409030. | 414009. | -1.20% | 021 |
| 217 PENNSYLVANIA | 19TH | 415058. | 419235. | -.99%  | 330 |
| 218 S. CAROLINA  | 6TH  | 394302. | 397099. | -.70%  | 346 |
| 219 IOWA         | 5TH  | 391489. | 393933. | -.62%  | 118 |
| 220 PENNSYLVANIA | 1ST  | 418192. | 419235. | -.24%  | 312 |
| 221 OHIO         | 21ST | 421804. | 422017. | -.05%  | 299 |

\*CALCULATED FROM DATA GIVEN IN EXHIBIT A. THE 22 AT-LARGE AREAS ARE NOT INCLUDED.



[fol. 216]

IN UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA

DEFENDANTS' EXHIBIT 8

EXHIBIT A

U. S. CONGRESSIONAL DISTRICTS  
(Effective January, 1963—1960 Population)

*Alabama\**

8 to be elected at-large: 3,266,740  
(9 chosen in 9 districts in May 1, 1962 primary; 8 of the 9 receiving highest votes in May 29, 1962 primary will serve.)

*Alaska\**

At-large 226,167

*Arizona*

(*Arizona Revised Statutes Annotated*, sec. 16-727; and  
U. S. Census of Population, 1960)

|     |         |
|-----|---------|
| 1st | 663,510 |
| 2nd | 440,415 |
| 3rd | 198,236 |

*Arkansas*

(*Congressional Quarterly Weekly Report*, Oct. 13, 1961,  
p. 1739)

|     |         |
|-----|---------|
| 1st | 360,183 |
| 2nd | 517,860 |
| 3rd | 332,844 |
| 4th | 575,385 |

*California\*\*\**

(*Congressional Quarterly Weekly Report*, July 21, 1961,  
p. 1281)

|     |         |
|-----|---------|
| 1st | 533,807 |
| 2nd | 406,506 |



*California—(continued)*

|            |         |
|------------|---------|
| 3rd        | 502,778 |
| 4th        | 310,651 |
| 5th        | 301,172 |
| 6th        | 439,144 |
| 7th        | 337,603 |
| 8th        | 368,421 |
| 9th        | 381,225 |
| 10th       | 463,260 |
| 11th       | 444,387 |
| 12th       | 379,010 |
| 13th       | 368,100 |
| 14th       | 409,030 |
| 15th       | 407,283 |
| 16th       | 496,859 |
| 17th       | 372,590 |
| 18th       | 510,341 |
| 19th       | 393,986 |
| 20th       | 379,370 |
| 21st       | 369,983 |
| [fol. 217] |         |
| 22nd       | 392,600 |
| 23rd       | 423,282 |
| 24th       | 407,654 |
| 25th       | 389,625 |
| 26th       | 389,216 |
| 27th       | 374,283 |
| 28th       | 591,822 |
| 29th       | 379,671 |
| 30th       | 389,762 |
| 31st       | 380,679 |
| 32nd       | 419,781 |
| 33rd       | 503,591 |
| 34th       | 460,087 |
| 35th       | 447,333 |
| 36th       | 430,573 |
| 37th       | 398,597 |
| 38th       | 378,296 |

124.

[fol. 218]

*Colorado\**

|     |         |
|-----|---------|
| 1st | 493,887 |
| 2nd | 653,954 |
| 3rd | 410,555 |
| 4th | 195,551 |

*Connecticut\**

|          |                              |
|----------|------------------------------|
| 1st      | 689,555                      |
| 2nd      | 411,919                      |
| 3rd      | 461,229                      |
| 4th      | 653,589                      |
| 5th      | 318,942                      |
| at-large | 2,535,234 (total population) |

*Delaware\**

|          |         |
|----------|---------|
| at-large | 446,292 |
|----------|---------|

*Florida*

(*Congressional Quarterly Weekly Report*, June 9, 1961, p. 954)

|      |         |
|------|---------|
| 1st  | 379,288 |
| 2nd  | 455,411 |
| 3rd  | 500,000 |
| 4th  | 482,968 |
| 5th  | 377,421 |
| 6th  | 660,345 |
| 7th  | 405,611 |
| 8th  | 241,250 |
| 9th  | 237,235 |
| 10th | 397,788 |
| 11th | 439,578 |
| 12th | 374,655 |

*Georgia\**

|     |         |
|-----|---------|
| 1st | 379,933 |
| 2nd | 301,123 |
| 3rd | 422,198 |

*Georgia—(continued)*

|      |         |
|------|---------|
| 4th  | 323,489 |
| 5th  | 823,680 |
| 6th  | 330,235 |
| 7th  | 450,740 |
| 8th  | 291,185 |
| 9th  | 272,154 |
| 10th | 348,379 |

[fol. 219]

*Hawaii\**

|          |                            |
|----------|----------------------------|
| at-large | 632,772 (total population) |
| at-large | 632,772 (total population) |

*Idaho\**

|     |         |
|-----|---------|
| 1st | 257,242 |
| 2nd | 409,949 |

*Illinois*

(*Congressional Quarterly Weekly Report*, Dec. 1, 1961,  
p. 1911)

|      |           |
|------|-----------|
| 1st  | 388,796** |
| 2nd  | 370,514** |
| 3rd  | 425,117** |
| 4th  | 511,808** |
| 5th  | 362,638** |
| 6th  | 277,169** |
| 7th  | 392,683** |
| 8th  | 474,503** |
| 9th  | 428,463** |
| 10th | 557,221** |
| 11th | 430,043** |
| 12th | 398,192   |
| 13th | 503,022** |
| 14th | 505,076   |
| 15th | 410,650   |
| 16th | 395,293   |
| 17th | 387,204   |
| 18th | 391,232   |
| 19th | 350,515   |



*Illinois*—(continued)

|      |         |
|------|---------|
| 20th | 445,443 |
| 21st | 363,196 |
| 22nd | 373,881 |
| 23rd | 443,553 |
| 24th | 487,198 |

*Indiana*\*

|      |         |
|------|---------|
| 1st  | 513,269 |
| 2nd  | 357,309 |
| 3rd  | 472,958 |
| 4th  | 390,010 |
| 5th  | 459,473 |
| 6th  | 333,783 |
| 7th  | 329,213 |
| 8th  | 423,929 |
| 9th  | 290,596 |
| 10th | 394,391 |
| 11th | 697,567 |

[fol. 220]

*Iowa**(Congressional Quarterly Weekly Report, May 19, 1961, p. 855)*

|     |         |
|-----|---------|
| 1st | 403,048 |
| 2nd | 442,406 |
| 3rd | 403,442 |
| 4th | 366,119 |
| 5th | 391,489 |
| 6th | 397,877 |
| 7th | 353,156 |

*Kansas**(Congressional Quarterly Weekly Report, April 21, 1961, p. 684)*

|     |         |
|-----|---------|
| 1st | 539,592 |
| 2nd | 446,621 |
| 3rd | 377,406 |
| 4th | 441,409 |
| 5th | 373,583 |

*Kentucky*

(*Congressional Quarterly Weekly Report*, March 16, 1962,  
p. 447)

|     |         |
|-----|---------|
| 1st | 350,839 |
| 2nd | 357,627 |
| 3rd | 610,947 |
| 4th | 478,783 |
| 5th | 365,140 |
| 6th | 411,545 |
| 7th | 463,273 |

*Louisiana\**

|     |         |
|-----|---------|
| 1st | 449,491 |
| 2nd | 499,561 |
| 3rd | 387,207 |
| 4th | 391,541 |
| 5th | 345,013 |
| 6th | 536,029 |
| 7th | 384,330 |
| 8th | 263,850 |

*Maine*

(*Congressional Quarterly Weekly Report*, June 16, 1961,  
p. 1002)

|     |         |
|-----|---------|
| 1st | 463,800 |
| 2nd | 505,465 |

[fol. 221]

*Maryland\**

|          |                              |
|----------|------------------------------|
| 1st      | 243,570                      |
| 2nd      | 621,935                      |
| 3rd      | 258,826                      |
| 4th      | 283,320                      |
| 5th      | 711,045                      |
| 6th      | 608,666                      |
| 7th      | 373,327                      |
| at-large | 3,100,689 (total population) |

*Massachusetts**(Congressional Quarterly Weekly Report, May 11, 1962,  
p. 808)*

|      |         |
|------|---------|
| 1st  | 376,336 |
| 2nd  | 388,578 |
| 3rd  | 441,558 |
| 4th  | 444,069 |
| 5th  | 450,716 |
| 6th  | 452,956 |
| 7th  | 392,350 |
| 8th  | 420,596 |
| 9th  | 478,962 |
| 10th | 456,308 |
| 11th | 441,180 |
| 12th | 404,969 |

*Michigan\**

|          |                              |
|----------|------------------------------|
| 1st      | 283,302                      |
| 2nd      | 483,343                      |
| 3rd      | 427,899                      |
| 4th      | 366,991                      |
| 5th      | 461,906                      |
| 6th      | 623,842                      |
| 7th      | 664,556                      |
| 8th      | 398,106                      |
| 9th      | 312,854                      |
| 10th     | 308,917                      |
| 11th     | 240,793                      |
| 12th     | 177,431                      |
| 13th     | 268,040                      |
| 14th     | 462,192                      |
| 15th     | 337,017                      |
| 16th     | 802,994                      |
| 17th     | 512,752                      |
| 18th     | 690,259                      |
| at-large | 7,823,194 (total population) |



[fol. 222]

**Minnesota***(Congressional Quarterly Weekly Report, Dec. 22, 1961,  
p. 1971)*

|     |         |
|-----|---------|
| 1st | 438,835 |
| 2nd | 375,475 |
| 3rd | 445,898 |
| 4th | 474,957 |
| 5th | 482,872 |
| 6th | 420,235 |
| 7th | 377,675 |
| 8th | 397,917 |

**Mississippi***(Congressional Quarterly Weekly Report, April 6, 1962,  
p. 557)*

|     |         |
|-----|---------|
| 1st | 364,963 |
| 2nd | 608,441 |
| 3rd | 460,100 |
| 4th | 295,072 |
| 5th | 449,565 |

**Missouri***(Congressional Quarterly Weekly Report, July 7, 1961,  
p. 1209)*

|      |         |
|------|---------|
| 1st  | 465,486 |
| 2nd  | 505,854 |
| 3rd  | 481,218 |
| 4th  | 403,217 |
| 5th  | 394,263 |
| 6th  | 388,486 |
| 7th  | 436,933 |
| 8th  | 452,385 |
| 9th  | 409,369 |
| 10th | 381,602 |

**Montana**

|     |         |
|-----|---------|
| 1st | 274,194 |
| 2nd | 400,573 |

**Nebraska***(Congressional Quarterly Weekly Report, May 12, 1961,  
p. 812)*

|     |         |
|-----|---------|
| 1st | 530,507 |
| 2nd | 404,695 |
| 3rd | 476,128 |

**Nevada\***

|          |         |
|----------|---------|
| at-large | 285,278 |
|----------|---------|

[fol. 223]

**New Hampshire\***

|     |         |
|-----|---------|
| 1st | 331,818 |
| 2nd | 275,103 |

**New Jersey***(Congressional Quarterly Weekly Report, May 19, 1961,  
p. 857)*

|      |         |
|------|---------|
| 1st  | 585,586 |
| 2nd  | 316,285 |
| 3rd  | 442,642 |
| 4th  | 490,891 |
| 5th  | 405,533 |
| 6th  | 504,255 |
| 7th  | 555,555 |
| 8th  | 394,279 |
| 9th  | 451,126 |
| 10th | 303,058 |
| 11th | 308,660 |
| 12th | 362,914 |
| 13th | 256,977 |
| 14th | 255,165 |
| 15th | 433,856 |

[fol. 224]

**New Mexico\***

|          |                            |
|----------|----------------------------|
| At-large | 951,023 (Total population) |
| At-large | 951,023 (Total population) |

*New York*  
(*Congressional Quarterly Weekly Report*, Nov. 17, 1961,  
p. 1870)

|      |         |
|------|---------|
| 1st  | 398,254 |
| 2nd  | 371,950 |
| 3rd  | 399,967 |
| 4th  | 394,494 |
| 5th  | 402,290 |
| 6th  | 416,600 |
| 7th  | 457,124 |
| 8th  | 438,192 |
| 9th  | 426,771 |
| 10th | 424,617 |
| 11th | 403,628 |
| 12th | 469,908 |
| 13th | 454,285 |
| 14th | 465,889 |
| 15th | 349,850 |
| 16th | 352,024 |
| 17th | 382,320 |
| 18th | 431,330 |
| 19th | 445,175 |
| 20th | 439,456 |
| 21st | 361,770 |
| 22nd | 355,847 |
| 23rd | 358,258 |
| 24th | 348,940 |
| 25th | 438,409 |
| 26th | 402,204 |
| 27th | 409,349 |
| 28th | 396,122 |
| 29th | 453,165 |
| 30th | 460,409 |
| 31st | 353,183 |
| 32nd | 385,406 |
| 33rd | 415,333 |
| 34th | 423,028 |
| 35th | 386,148 |
| 36th | 410,943 |
| 37th | 410,432 |



**New York—(continued)**

|      |         |
|------|---------|
| 38th | 382,277 |
| 39th | 435,393 |
| 40th | 435,684 |
| 41st | 435,880 |

[fol. 225]

**North Carolina***(Congressional Quarterly Weekly Report, June 30, 1961, p. 1178)*

|      |         |
|------|---------|
| 1st  | 277,861 |
| 2nd  | 350,135 |
| 3rd  | 430,360 |
| 4th  | 460,795 |
| 5th  | 454,261 |
| 6th  | 487,159 |
| 7th  | 448,933 |
| 8th  | 491,461 |
| 9th  | 404,093 |
| 10th | 390,020 |
| 11th | 361,077 |

**North Dakota***(Congressional Quarterly Weekly Report, Jan. 27, 1961, p. 112)*

|     |         |
|-----|---------|
| 1st | 333,290 |
| 2nd | 299,156 |

**Ohio\***

|      |         |
|------|---------|
| 1st  | 375,753 |
| 2nd  | 488,368 |
| 3rd  | 726,156 |
| 4th  | 356,994 |
| 5th  | 298,051 |
| 6th  | 380,847 |
| 7th  | 435,621 |
| 8th  | 290,694 |
| 9th  | 456,931 |
| 10th | 274,441 |
| 11th | 512,022 |
| 12th | 682,962 |

*Ohio—(continued)*

|          |                              |
|----------|------------------------------|
| 13th     | 389,312                      |
| 14th     | 578,884                      |
| 15th     | 236,288                      |
| 16th     | 492,631                      |
| 17th     | 375,504                      |
| 18th     | 328,921                      |
| 19th     | 378,122                      |
| 20th     | 465,341                      |
| 21st     | 421,804                      |
| 22nd     | 357,998                      |
| 23rd     | 402,752                      |
| At-large | 9,706,397 (Total population) |

[fol. 226]

*Oklahoma\**

|     |         |
|-----|---------|
| 1st | 521,542 |
| 2nd | 368,976 |
| 3rd | 227,692 |
| 4th | 252,208 |
| 5th | 552,863 |
| 6th | 405,003 |

*Oregon\**

|     |         |
|-----|---------|
| 1st | 517,678 |
| 2nd | 265,164 |
| 3rd | 522,813 |
| 4th | 463,032 |

*Pennsylvania*

(Congressional Quarterly Weekly Report, Feb. 9, 1962,  
p. 218)

|     |         |
|-----|---------|
| 1st | 418,192 |
| 2nd | 397,995 |
| 3rd | 406,993 |
| 4th | 387,156 |
| 5th | 392,176 |
| 6th | 552,579 |
| 7th | 553,154 |
| 8th | 536,103 |

*Pennsylvania*—(continued)

|      |         |
|------|---------|
| 9th  | 488,967 |
| 10th | 373,894 |
| 11th | 346,972 |
| 12th | 439,745 |
| 13th | 516,682 |
| 14th | 390,512 |
| 15th | 303,026 |
| 16th | 353,564 |
| 17th | 408,036 |
| 18th | 409,291 |
| 19th | 415,058 |
| 20th | 404,997 |
| 21st | 352,629 |
| 22nd | 358,173 |
| 23rd | 372,941 |
| 24th | 456,157 |
| 25th | 434,552 |
| 26th | 426,035 |
| 27th | 423,787 |

[fol. 227]

*Rhode Island*\*

|     |         |
|-----|---------|
| 1st | 399,782 |
| 2nd | 459,706 |

*South Carolina*\*

|     |         |
|-----|---------|
| 1st | 421,478 |
| 2nd | 531,555 |
| 3rd | 318,809 |
| 4th | 444,230 |
| 5th | 272,220 |
| 6th | 394,302 |

*South Dakota*\*

|     |         |
|-----|---------|
| 1st | 497,669 |
| 2nd | 182,845 |



*Tennessee*

|     |         |
|-----|---------|
| 1st | 460,583 |
| 2nd | 497,121 |
| 3rd | 412,664 |
| 4th | 389,563 |
| 5th | 399,743 |
| 6th | 324,357 |
| 7th | 232,652 |
| 8th | 223,387 |
| 9th | 627,019 |

*Texas*

|      |         |
|------|---------|
| 1st  | 245,942 |
| 2nd  | 420,402 |
| 3rd  | 293,942 |
| 4th  | 216,371 |
| 5th  | 951,527 |
| 6th  | 248,149 |
| 7th  | 265,629 |
| 8th  | 568,193 |
| 9th  | 498,775 |
| 10th | 353,454 |
| 11th | 322,484 |
| 12th | 538,495 |
| 13th | 326,781 |
| 14th | 539,262 |

[fol. 228]

|      |         |
|------|---------|
| 15th | 515,716 |
| 16th | 573,438 |
| 17th | 287,889 |
| 18th | 363,596 |
| 19th | 424,774 |
| 20th | 687,151 |
| 21st | 262,742 |
| 22nd | 674,965 |

At-large 9,579,677 (Total population)

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*Utah\**

|     |         |
|-----|---------|
| 1st | 317,973 |
| 2nd | 572,654 |

*Vermont\**

|          |         |
|----------|---------|
| At-large | 389,881 |
|----------|---------|

*Virginia\**

|      |         |
|------|---------|
| 1st  | 422,624 |
| 2nd  | 494,292 |
| 3rd  | 418,081 |
| 4th  | 352,157 |
| 5th  | 325,989 |
| 6th  | 378,864 |
| 7th  | 312,890 |
| 8th  | 357,461 |
| 9th  | 364,973 |
| 10th | 539,618 |

*Washington\**

|     |         |
|-----|---------|
| 1st | 420,548 |
| 2nd | 366,395 |
| 3rd | 342,540 |
| 4th | 414,764 |
| 5th | 399,093 |
| 6th | 399,362 |
| 7th | 510,512 |

[fol. 223]

*West Virginia*

(*Congressional Quarterly Weekly Report*, March 31, 1961,  
p. 533)

|     |         |
|-----|---------|
| 1st | 408,794 |
| 2nd | 329,612 |
| 3rd | 396,871 |
| 4th | 422,046 |
| 5th | 303,098 |

**Wisconsin\***

|      |         |
|------|---------|
| 1st  | 434,528 |
| 2nd  | 530,316 |
| 3rd  | 299,265 |
| 4th  | 515,367 |
| 5th  | 520,674 |
| 6th  | 376,325 |
| 7th  | 319,547 |
| 8th  | 411,807 |
| 9th  | 307,078 |
| 10th | 236,870 |

**Wyoming\***

At-large 330,066

\* *Congressional Quarterly Weekly Report*, Feb. 2, 1962, pp. 158-169; and *Congressional Quarterly Special Report*, Part II of Weekly Report No. 18, May 4, 1962, pp. 724-729 and 691-723.

\*\* Chicago population figures include some minor estimates.


\*\*\* Figures for districts which constitute only a part of one or more counties are estimates only.



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EXHIBIT B

See Opposite 

**EXHIBIT B****States Ranked by Ratio of Most Populous to Least  
Populous Congressional Districts<sup>1</sup>****(Districts effective: January, 1963 - Populations: 1960)**

| <b>State</b>       | <b>Most<br/>Populous<br/>District</b> | <b>Least<br/>Populous<br/>District</b> | <b>Ratio of<br/>Most Populous to<br/>Least Populous</b> |
|--------------------|---------------------------------------|--|---|
| 1. Michigan        | 16th 802,994                          | 12th 177,431                           | 4.53  |
| 2. Texas           | 5th 951,387                           | 4th 216,371                            | 4.40  |
| 3. Arizona         | 1st 683,510                           | 3rd 158,236                            | 3.35  |
| 4. Colorado        | 2nd 653,954                           | 4th 193,551                            | 3.34  |
| 5. Ohio            | 3rd 786,156                           | 15th 236,288                           | 3.07  |
| 6. Georgia         | 5th 823,680                           | 9th 272,154                            | 3.03  |
| 7. Maryland        | 5th 711,045                           | 1st 243,570                            | 2.92  |
| 8. Tennessee       | 9th 687,019                           | 8th 223,387                            | 2.81  |
| 9. Florida         | 6th 660,345                           | 9th 237,235                            | 2.78  |
| 10. South Dakota   | 1st 497,669                           | 2nd 182,843                            | 2.72  |
| 11. Oklahoma       | 5th 552,863                           | 3rd 227,692                            | 2.43  |
| 12. Indiana        | 11th 697,567                          | 9th 290,526                            | 2.40  |
| 13. New Jersey     | 1st 585,586                           | 14th 235,165                           | 2.29  |
| 14. Wisconsin      | 2nd 530,316                           | 10th 236,870                           | 2.24  |
| 15. Connecticut    | 1st 689,555                           | 5th 318,942                            | 2.16  |
| 16. Mississippi    | 2nd 608,441                           | 4th 295,072                            | 2.06  |
| 17. Louisiana      | 6th 536,089                           | 8th 263,830                            | 2.03  |
| 18. Illinois       | 10th 557,221                          | 6th 277,169                            | 2.01  |
| 19. California     | 28th 591,822                          | 5th 301,172                            | 1.97  |
| 20. Oregon         | 3rd 522,813                           | 2nd 265,164                            | 1.97  |
| 21. South Carolina | 2nd 531,555                           | 5th 272,220                            | 1.95  |
| 22. Pennsylvania   | 7th 553,194                           | 15th 303,086                           | 1.83  |
| 23. Utah           | 2nd 572,654                           | 1st 317,973                            | 1.80  |
| 24. North Carolina | 8th 491,461                           | 1st 277,861                            | 1.77  |
| 25. Kentucky       | 3rd 610,947                           | 1st 350,839                            | 1.74  |
| 26. Arkansas       | 4th 575,385                           | 3rd 328,844                            | 1.73  |
| 27. Virginia       | 10th 539,618                          | 7th 312,830                            | 1.72  |
| 28. Idaho          | 2nd 409,949                           | 1st 257,842                            | 1.59  |
| 29. Washington     | 7th 510,512                           | 3rd 342,980                            | 1.49  |
| 30. West Virginia  | 4th 422,046                           | 5th 303,098                            | 1.49  |
| 31. Montana        | 2nd 400,573                           | 1st 274,194                            | 1.46  |
| 32. Kansas         | 1st 539,592                           | 5th 373,583                            | 1.44  |
| 33. New York       | 12th 469,908                          | 24th 348,940                           | 1.35  |
| 34. Missouri       | 2nd 505,854                           | 10th 381,802                           | 1.33  |
| 35. Nebraska       | 1st 430,507                           | 2nd 404,695                            | 1.31  |
| 36. Minnesota      | 5th 482,572                           | 2nd 375,475                            | 1.29  |
| 37. Massachusetts  | 9th 478,962                           | 1st 376,336                            | 1.27  |
| 38. Iowa           | 2nd 442,406                           | 7th 353,156                            | 1.25  |
| 39. New Hampshire  | 1st 331,818                           | 2nd 275,103                            | 1.21  |
| 40. Rhode Island   | 2nd 459,706                           | 1st 399,782                            | 1.15  |
| 41. North Dakota   | 1st 333,290                           | 2nd 299,156                            | 1.11  |
| 42. Maine          | 2nd 505,465                           | 1st 463,800                            | 1.09  |

<sup>1</sup>Calculations made from data contained in EXHIBIT A. The following eight states are not included, since they will elect their Congressmen on an at-large basis in 1962: Alabama, Alaska, Delaware, Hawaii, Nevada, New Mexico, Vermont, and Wyoming.

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IN THE  
SUPREME COURT OF THE UNITED STATES

JOHN F. WHEATLEY, JR., and GARLETT ORR, JR.,  
Appellants,

v. ROBERT T. WHEATLEY, as Governor of the State of Georgia,  
and BEN W. FORTSON, JR., as Secretary of State  
of the State of Georgia,  
Appellees.

On Appeal from the United States District Court for the  
Northern District of Georgia.

ADMINISTRATIVE STATEMENT.

FRANK J. CARR,  
2201 Bank of Georgia Building,  
Atlanta 3, Georgia,  
EMMETT A. BOWEN, JR.,  
1045 West Building,  
Atlanta 3, Georgia,  
BARBARA FRANKLIN,  
2201 Bank of Georgia Building,  
Atlanta 3, Georgia,  
Counsel for Appellants.

Printed at the Supreme Court Building, Washington, D.C. 20540. Printed 1-6-67.



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No. ....

IN THE  
**SUPREME COURT OF THE UNITED STATES.**

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**JAMES P. WESBERRY, JR., and CANDLER CRIM, JR.,**  
Appellants,

v.

**S. ERNEST VANDIVER, as Governor of the State of Georgia,**  
**and BEN W. FORTSON, JR., as Secretary of State**  
of the State of Georgia,  
Appellees.

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On Appeal from the United States District Court for the  
Northern District of Georgia.

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**JURISDICTIONAL STATEMENT:**

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**JURISDICTIONAL STATEMENT.**

Appellants appeal from the judgment of the United States District Court for the Northern District of Georgia, entered on June 20, 1962, dismissing an action to have declared unconstitutional and to enjoin the enforcement of the Georgia Congressional-District Reapportionment Act of 1931, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

### OPINION BELOW.

The opinion of the District Court for the Northern District of Georgia, Atlanta Division, is reported in **Westberry v. Vandiver**, 206 F. Supp. 276 (N. D. Ga. 1962), and is attached hereto as Appendix A.

### JURISDICTION.

This action was brought pursuant to Title 42, United States Code, Section 1983 by qualified Georgia voters to have declared unconstitutional and to enjoin the enforcement of the Georgia Congressional-District Reapportionment Act of 1931, which infringes their right to vote for members of the House of Representatives in violation of rights, privileges and immunities conferred by the Constitution and laws of the United States. The jurisdiction of the District Court was predicated upon Title 28, United States Code, Section 1343 (3) and (4), and Sections 2201 and 2281. The judgment of the District Court was entered on June 20, 1961, and notice of appeal was filed in that court on August 17, 1962.

The jurisdiction of the Supreme Court to review this decision by appeal is conferred by Title 28, United States Code, Sections 1253 and 2101 (b). The following decisions sustain the jurisdiction of the Supreme Court to review on direct appeal the judgment in this case: **Baker v. Carr**, 369 U. S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962); **Colegrove v. Green**, 328 U. S. 549, 66 S. Ct. 1198, 90 L. Ed. 1432 (1946); **Wood v. Broom**, 287 U. S. 1, 53 S. Ct. 1, 77 L. Ed. 131 (1932).



## STATUTES INVOLVED.

The statute, the validity of which is challenged by the Appellants in this appeal, is the Georgia Congressional District Reapportionment Act of 1931, Ga. Laws 1931, p. 46, Ga. Code, § 34-2301 (1933), which provides:

### "CONGRESSIONAL-DISTRICT REAPPORTIONMENT.

No. 157.

An Act to reapportion the several Congressional Districts of this State, by abolishing the twelve (12) districts created by the reapportionment Act of 1911, and creating in lieu thereof ten (10) Congressional Districts in this State, in accordance with the Act of Congress decreasing the number of congressmen from Georgia to ten (10); and for other purposes:

Section 1. Be it enacted by the General Assembly of Georgia, and it is hereby enacted by authority of the same, that the Congressional Reapportionment Act approved August 19, 1911, being Bill No. 233, pages 146, 147, and 148 of the Acts of 1911, shall be and the same is hereby repealed, and the twelve (12) Congressional Districts created thereby are hereby abolished.

Sec. 2. Be it further enacted by the authority aforesaid, that the State of Georgia is hereby divided into ten (10) Congressional Districts, in conformity with the Act of Congress of the United States approved June 18th, 1929 decreasing the number of congressmen from Georgia to ten (10), each of said districts being entitled to elect one representative to the Congress of the United States. The districts shall be composed of the following counties, respectively:

First District: Bryan, Bulloch, Burke, Candler, Chatham, Effingham, Emanuel, Evans, Jenkins, Liberty, Long, McIntosh, Montgomery, Screven, Tattnall, Toombs, Treutlen, and Wheeler.

Second District: Baker, Brooks, Calhoun, Colquitt, Decatur, Dougherty, Early, Grady, Miller, Mitchell, Seminole, Tift, Thomas, and Worth.

Third District: Ben Hill, Chattahoochee, Clay, Crisp, Dodge, Dooly, Harris, Houston, Lee, Marion, Macon, Muscogee, Pulaski, Quitman, Randolph, Schley, Stewart, Sumter, Taylor, Peach, Terrell, Turner, Webster, and Wilcox.

Fourth District: Butts, Carroll, Clayton, Coweta, Fayette, Heard, Henry, Lamar, Meriwether, Newton, Pike, Spalding, Talbot, Troup, and Upson.

Fifth District: DeKalb, Fulton, and Rockdale.

Sixth District: Baldwin, Bibb, Bleckley, Crawford, Glascock, Hancock, Jasper, Jefferson, Jones, Johnson, Laurens, Monroe, Putnam, Twiggs, Washington, and Wilkinson.

Seventh District: Bartow, Catoosa, Chattooga, Cobb, Dade, Douglas, Floyd, Gordon, Haralson, Murray, Paulding, Polk, Walker, and Whitfield.

Eighth District: Atkinson, Appling, Bacon, Berrien, Brantley, Camden, Charlton, Clinch, Coffee, Cook, Echols, Glynn, Irwin, Jeff Davis, Lanier, Lowndes, Pierce, Telfair, Ware, and Wayne.

Ninth District: Banks, Barrow, Cherokee, Dawson, Fannin, Forsyth, Gilmer, Gwinnett, Habersham, Hall, Jackson, Lumpkin, Pickens, Rabun, Towns, Stephens, Union, and White.

Tenth District: Clarke, Columbia, Elbert, Greene, Hart, Lincoln, Madison, McDuffie, Morgan, Oconee, Oglethorpe, Richmond, Taliaferro, Walton, Warren, Wilkes, and Franklin.

Sec. 3. Be it further enacted by the authority aforesaid, that all laws, and parts of laws, in conflict herewith be and the same are hereby repealed."

### **QUESTIONS PRESENTED.**

1. Whether an apportionment of congressional districts which deprives the Appellants of more than one-half of their effective voice in the selection of representatives in Congress violates the Equal Protection Clause of the Fourteenth Amendment.

2. Whether the Due Process Clause is violated by a congressional apportionment which deprives the Appellants of their full measure of representation in the popular house in Congress.

3. Whether a congressional apportionment which deprives the Appellants of a full voice in the selection of members of the House of Representatives deprives them of those privileges and immunities of national citizenship which are secured against invasion by the State by the Fourteenth Amendment.

4. Whether the federal courts have jurisdiction of this action to enjoin the election of members of the House of Representatives under an apportionment which violates the Constitution.

### **STATEMENT.**

This action was brought in the United States District Court for the Northern District of Georgia by the Appellants, citizens of the United States, each of whom is a resident of Fulton County, Georgia, a registered voter of the State and qualified to vote in the election of members of the House of Representatives from the Fifth Congressional District.



The Defendants are the Governor and the Secretary of State of Georgia, who are responsible for the preparation of the ballots, the certification of candidates, the counting of returns, and the certification of Representatives elect in elections for members of the House of Representatives of the Congress of the United States.

The complaint challenges the validity of the Georgia Congressional District Reapportionment Act of 1931 on grounds that it infringes Appellants' right to a full and equal ballot in elections for members of the House of Representatives, in violation of the rights, privileges and immunities secured by the Constitution and laws of the United States. 42 U. S. C., § 1983.

The adoption by Congress in 1929, after an eighteen year lapse, of the reapportionment of the House of Representatives following the census of 1930, necessitated a reduction of the number of seats to which Georgia was entitled in the House from twelve to ten Representatives. In 1931, the General Assembly reapportioned the State into ten congressional districts, varying in population from 218,496 in the Ninth District to 396,112 in the Fifth District. By 1940, the disparity between the Fifth and Ninth Congressional Districts had climbed to 252,244; by 1950, 472,234; and by 1960, it had reached 551,526, yet the General Assembly has made no attempt to correct this discrimination.

By 1960, after 30 years without reapportionment, the population of the Fifth District had soared to 823,680, to become the second largest congressional district in the United States. The more than 820,000 people residing in Fulton, DeKalb and Rockdale Counties, comprising the Fifth Congressional District, constitute more than 20% of Georgia's entire population and yet possess only one-tenth of its representation in Congress. Although the Fifth District has more than 2.7 times the population of the Sec-

ond District, 2.8 times that of the Eighth District, and more than 3 times that of the Ninth Congressional District, each district sends one Representative to the House.

### THE QUESTIONS PRESENTED ARE SUBSTANTIAL.

Equality of apportionment of congressional districts constitutes a fundamental presupposition upon which that body which Madison proudly characterized the "great depository of democratic principle" is founded. Indeed, it was in the House of Representatives that the Framers of the Constitution sought to epitomize the equalitarian principles of the Declaration of Independence by affording representation to "the People." By insuring equality of political participation to its people, the government secures not only the strength of popular support, but affords to each citizen the security of an attentive consideration of his rights by those in power. Here lies the genius of representative government: **Rice v. Elmore**, 165 F. 2d 387, 392 (4 Cir. 1947). However, the government is responsive only to those upon whom its power depends. The disenfranchisement of large segments of the people due to the failure of the States to properly reapportion congressional districts threatens to undermine these basic principles upon which the structure of government rests.

For some years the federal courts have declined jurisdiction of actions which were brought to procure more equitable representation on grounds that only nonjusticiable political questions were presented. See, e. g., **South v. Peters**, 339 U. S. 276, 70 S. Ct. 641, 94 L. Ed. 834 (1950). The recent decision of the Supreme Court in **Baker v. Carr**, 369 U. S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962), emphatically dispels this misconception and for the first time the courts and the state legislatures are squarely presented with the necessity of determining the precise extent of the constitutional principles which are applicable to such

cases. In order that the legislatures of the several states may discharge their constitutional obligations, it is imperative that this Court establish in the clearest terms possible the Constitutional standards with which they are to comply.

In few cases would review by this Court be more appropriate than here, for the problem of congressional malapportionment is national in scope and profoundly affects the constitutional structure of the National Legislature. It demands an immediate, uniform and final solution which only this Court is capable of granting.

The principle of equality so eloquently declared in the Declaration of Independence has pervaded every aspect of our governmental structure from the time of its inception. **United States v. Cruikshank**, 92 U. S. (2 Otto), 542, 555, 23 L. Ed. 588 (1874). Always implicit in the concept of due process of law [**Bolling v. Sharps**, 347 U. S. 497, 74 S. Ct. 693, 98 L. Ed. 884 (1954), **Twining v. New Jersey**, 211 U. S. 78, 29 S. Ct. 14, 53 L. Ed. 97 (1908)], the constitutional guaranty of equality was reaffirmed by the Fourteenth Amendment. It cannot now be doubted that the protection of the Equal Protection Clause extends to political rights. **Baker v. Carr**, 369 U. S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962); **Gomillion v. Lightfoot**, 364 U. S. 339, 81 S. Ct. 125, 5 L. Ed. 2d 110 (1960). "Whatever else the framers [of the Fourteenth Amendment] sought to achieve, it is clear that the matter of primary concern was the establishment of equality in the enjoyment of basic civil and political rights . . ." **Shelly v. Kraemer**, 334 U. S. 1, 23, 68 S. Ct. 836, 92 L. Ed. 1161 (1948).

These principles are particularly applicable to the election of representatives to the popular house of the national legislature, for by the clear implication of Article I, § 2, and Section 2 of the Fourteenth Amendment, Representatives in Congress must be apportioned equally



among the people within each of the several states according to their numbers. See dissenting opinion of Mr. Justice Black in **Colegrove v. Green**, 328 U. S. 549, at 570, 66 S. Ct. 1198, 90 L. Ed. 1432 (1945).

Despite these constitutional imperatives, Georgia, by legislative lethargy, has perpetuated a system of congressional districts which deprive the Appellants, and all other qualified residents of the Fifth District, of one-half of the representation in the House of Representatives to which they are entitled. Under the present apportionment, with the exception of one possible combination (the Third and Seventh Districts), the Fifth Congressional District is larger than any two other districts in the State. Thus, the 563,000 residents of the Eighth and Ninth Districts control twice the number of congressmen as do the 823,000 residents of the Fifth District. In the election of congressmen, the ballots of individual voters residing in the Second District have more than 2.7 times the effective weight of the ballots cast by each of the Appellants in the Fifth District; those cast in the Eighth District are worth 2.8 times those of the Appellants; and those cast in the Ninth District are worth more than 3 times those cast by the Appellants. These disparities are invidiously discriminatory and contravene the guaranty of equal protection of the laws of the Fourteenth Amendment. Cf. **Baker v. Carr**, 369 U. S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962). Indeed, the District Court found the Georgia apportionment of congressional districts to be "grossly out of balance" and "arbitrary as measured by any conceivable standard." Despite

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<sup>1</sup> With reference to the great inequalities between districts, the District Court said:

"It is clear by any standard however that the population of the Fifth District is grossly out of balance with that of the other nine congressional districts of Georgia . . . It is readily apparent from those undisputed facts that plaintiffs. . . are

these findings, a majority of that court refused to hold the apportionment to be invalid under the Fourteenth Amendment. This conclusion was based upon the fallacious and untenable proposition that a classification of citizens which is arbitrary and without rational basis may nevertheless fail to amount to an invidious discrimination which is prohibited by the Fourteenth Amendment. As this court's decision in **Morey v. Doud**, 354 U. S. 457, 463, 77 S. Ct. 1344, 1 L. Ed. 2d 1485 (1957) makes manifestly clear, these terms are substantially synonymous.

The disparities in population between congressional districts are not the product of a rational legislative judgment. Instead, they result from legislative lethargy which has perpetuated the apportionment of 1931, despite the fact that its basis has been eroded away by the massive shifts in population which have occurred since its adoption. Thus, even if the apportionment were valid in the circumstances of its enactment, the changes wrought by the massive population shifts in the 30 years which have intervened since its enactment make irrational its continued application to the election of congressmen. **Nashville C. & S. L. Ry. v. Walters**, 294 U. S. 405, 415, 55 S. Ct. 486, 79 L. Ed. 949 (1935).

These factors make clear that there is here no room for the application of the presumption of constitutionality

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being deprived of equal treatment arising from the excess of population in their congressional district as compared with that of other districts in Georgia . . . [The apportionment of congressional districts in Georgia] reflects a system which has become arbitrary through inaction when considered in the light of the present population of the Fifth District and as measured by any conceivable reasonable standard."

Accepting these findings, it is indisputable that the apportionment violates the Fourteenth Amendment. *Guif, Colorado and Santa Fe Railway Co. v. Ellis*, 165 U. S. 150, 17 S. Ct. 255, 41 L. Ed. 666 (1897); *F. S. Royster Guano Co. v. Commonwealth of Virginia*, 253 U. S. 412, 40 S. Ct. 560, 64 L. Ed. 989 (1920); *Morey v. Doud*, 354 U. S. 457, 77 S. Ct. 1344, 1 L. Ed. 2d 1485 (1957).

which usually appertains to state legislative action. In this case, as in **Baker v. Carr**, *supra*, the frequency and magnitude of the inequalities between congressional districts, as well as the manner of their creation, admits of no rational legislative policy whatever.<sup>2</sup> This encroachment upon the fundamental rights of the Appellants may be sustained only upon a strong showing by the State of a paramount and compelling interest which demands that their right to an equal voice in the selection of congressmen be subordinated in order that voters residing in other districts may be given a greater share in government. Cf. **Bates v. City of Little Rock**, 361 U. S. 516, 524, 80 S. Ct. 412, 4 L. Ed. 2d 480 (1960); **N. A. A. C. P. v. Alabama**, 357 U. S. 449, 460-65, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (1957). This the Defendants have not even attempted. The irrational and invidious inequalities imposed by the present apportionment of congressional districts must be stricken as in contravention of the Equal Protection Clause of the Fourteenth Amendment.

The right of the Appellants as electors qualified under the laws of the State of Georgia to full and equal representation in the House of Representatives is a privilege and immunity of national citizenship which is secured against invasion by the State by the Fourteenth Amendment. **United States v. Classic**, 313 U. S. 299, 61 S. Ct. 1031, 85 L. Ed. 1368 (1941); **Twining v. State of New Jersey**, 211 U. S. 78, 97, 29 S. Ct. 14, 53 L. Ed. 97 (1908).

In **Twining v. State of New Jersey**, *supra*, this Court established the controlling definition of those rights which are within the protection of the Privilege and Immunities Clause of the Fourteenth Amendment when it said:

"Privileges and immunities of citizens of the United States . . . are only such as arise out of the nature

<sup>2</sup> 369 U. S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962), concurring opinion of Mr. Justice Clark.



and essential character of the National Government or are specifically granted or secured to all citizens or persons by the Constitution . . .

"Thus, among the rights and privileges of the national citizenship recognized by this court [is] . . . the right to vote for national offices."

The right of a qualified citizen to participate in the selection of national officers is inherent in the nature of our government as one republican in form, and characterizes the relationship which exists between a citizen and the general government. The fundamental nature of this right was well described by Judge Parker when he said:

"An essential feature of our form of government is the right of the citizen to participate in the governmental process. The political philosophy of the Declaration of Independence is that governments derive their just powers from the consent of the governed; and the right to a voice in the selection of officers of government is important, not only as a means of insuring that the government shall have the strength of popular support, but also as a means of securing the individual citizen proper consideration of his rights by those in power." *Rice v. Elmore*, 165 F. 2d 387, 392, (4 Cir. 1947).

It is the Constitution which creates the right to vote for members of Congress. It establishes the office, declares that it shall be elective and adopts as its criteria the qualifications prescribed by the states for the election of the most numerous branch of their legislatures. *Ex parte Yarbrough*, 110 U. S. 651, 662-663, 4 S. Ct. 152, 28 L. Ed. 274 (1884). It is the basic policy of the Constitution that every qualified elector shall have a right to a full and equal share in the selection of members of the lower house of the national legislature. This right is

expressly secured against malapportionment of representatives among the several states by Article I, Section 2, and by Section 2 of the Fourteenth Amendment, which require that representatives be apportioned among the several states according to their numbers. However, the constitutional policy securing to each citizen a full measure of legislative representation, extends to guarantee the right against deprivations which may occur within a single state as well as those which may occur among the several states. **Colegrove v. Green**, 328 U. S. 549, 66 S. Ct. 1198, 90 L. Ed. 1432 (1946), dissenting opinion.

The power to regulate the times, places and manner of election of members of Congress delegated by the Constitution to the States does not preclude review under the appropriate constitutional standards by the federal courts. This power is, as Mr. Justice Black recognized, "not to formulate policy, but rather to implement the policy laid down in the Constitution, that, so far as feasible, votes be given equally effective weight." **Colegrove v. Green**, 328 U. S. 549, 66 S. Ct. 1198, 90 L. Ed. 1432 (1946), dissenting opinion.

This Court has been vigilant to protect the right of qualified citizens to participate in the selection of national officers. The right to vote conferred by Article I, § 2 has been held to include more than the right to merely mark a ballot and deposit it in a box. It includes the right to have the ballot counted. **United States v. Classic**, 313 U. S. 299, 61 S. Ct. 1031, 85 L. Ed. 1368 (1941); **United States v. Mosley**, 238 U. S. 383, 35 S. Ct. 904, 59 L. Ed. 1355 (1915). The right of the people to choose includes the right to have their ballots counted at their full value, undiminished by fraudulent ballots which may be cast in the same election, to the end that an individual voter will not be deprived of his full measure of participation in the selection of representatives. **United States v. Baylor**, 322 U. S. 385, 64 S. Ct. 1101, 88 L. Ed. 1341 (1944).

Yet, the right to cast a ballot of full value is of little consequence if a state may, by the manipulation of congressional districts, deprive the ballot of all practical significance. If Georgia may allocate nine of its representatives to the 270,000 residents of the Ninth Congressional District, while permitting the remaining three and one-half million citizens to elect only a single representative, the government would cease to be responsive to the will of the people and to subserve those ends for which free governments are instituted.

"[I]t is the experience of history that the exclusion of any group of men from power is, sooner or later, their exclusion from the benefits of power. The will of the State is always operated by a government in terms of the wants of those upon whom that government depends for the refreshment of its authority . . . [N]o philosophy of politics can seriously claim to satisfy the demands of the individual unless it bases itself upon a recognition that citizens are equally entitled to the satisfaction of their desires. And the only way in which their desires can affect the will of the state with continuous emphasis is when the government of the state is compelled, by constitutional principle, to take them into definite account."

Laski, *An Introduction to Politics*, 37-38 (1931).

Thus, it is apparent that the right of the people to vote for members of Congress and the right to full representation in Congress by congressional districts of approximately equal size are, by their nature, complementary in the constitutional structure. The protection of each is essential to the fulfillment of the other to the end that the government will remain responsive to the will of the people. For this reason, both are within the protection of the Privileges and Immunities Clause of the Fourteenth Amendment.



It is clear that the questions presented by this appeal are subject to the jurisdiction of the federal courts. Although the defendants, Governor and Secretary of State of Georgia, have been brought before this Court because they are officers of the State of Georgia, this is not an unconsented suit against the State forbidden by the Eleventh Amendment. This action is not one to compel the exercise of official powers by state officers, of which the federal courts are without jurisdiction, but one to enjoin the unconstitutional individual acts of state officials which the State is powerless to authorize. **Georgia Railroad & Banking Co. v. Redwine**, 342 U. S. 299, 72 S. Ct. 321, 96 L. Ed. 335 (1952); **Ex parte Young**, 209 U. S. 123, 28 S. Ct. 441, 52 L. Ed. 714 (1908).

Unlike **Baker v. Carr**, 369 U. S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962), a grant of relief sought will not necessarily require the exercise of power by the State to prevent a default in representation. Congress has provided that in the event of a failure of a State to enact a valid apportionment, representatives are to be chosen state-wide in an at large election.<sup>3</sup>

The standing of a qualified individual voter to protect his ballot from dilution is now beyond question. **Baker v. Carr**, 369 U. S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962); **Colegrove v. Green**, 328 U. S. 549, 66 S. Ct. 1198, 90 L. Ed. 1432 (1945); **Wood v. Broom**, 287 U. S. 1, 53 S. Ct. 1, 77

<sup>3</sup> 2 U. S. C., § 2 (a). Although Congress has indicated a preference in normal circumstances for the election of Representatives by districts, this section, while not precisely applicable, provides strong evidence that Congress anticipated and sanctioned the at-large election of Representatives in extraordinary circumstances. In **Smiley v. Holm**, 285 U. S. 355, 52 S. Ct. 397, 76 L. Ed. 795 (1932); **Carroll v. Becker**, 285 U. S. 380, 52 S. Ct. 402, 76 L. Ed. 807 (1932); **Koenig v. Flynn**, 285 U. S. 375, 52 S. Ct. 403, 76 L. Ed. 805 (1932), this Court enjoined elections of representatives under invalid apportionments and ordered members of Congress elected at large if the state legislatures failed to enact valid apportionments.

L. Ed. 131 (1932); **Smiley v. Holm**, 285 U. S. 355, 52 S. Ct. 397, 76 L. Ed. 795 (1932); compare **Leser v. Garnett**, 258 U. S. 130, 42 S. Ct. 217, 66 L. Ed. 505 (1922), and **Fairchild v. Hughes**, 258 U. S. 126, 42 S. Ct. 274, 66 L. Ed. 499 (1922); **Hawke v. Smith** (No. 2), 253 U. S. 231, 40 S. Ct. 498, 64 L. Ed. 877 (1920).

The power of Congress to make or alter regulations enacted by the States and the power of the House to judge the qualifications of its members do not exclude the jurisdiction of the federal courts to determine the constitutional validity of a congressional apportionment enacted by the State. **Colegrove v. Green**, 328 U. S. 549, 66 S. Ct. 1198, 90 L. Ed. 1432 (1945); **Wood v. Broom**, 287 U. S. 1, 53 S. Ct. 1, 77 L. Ed. 131 (1932); **Smiley v. Holm**, 285 U. S. 355, 52 S. Ct. 397, 76 L. Ed. 795 (1932). Rather the powers of the two branches of government are concurrent. In three cases this Court rejected the contention that it was invading the exclusive jurisdiction of Congress when it reviewed and held invalid state legislative enactments apportioning representatives in Congress. In **Smiley v. Holm**, 285 U. S. 355, 52 S. Ct. 397, 76 L. Ed. 795 (1932), an apportionment of Minnesota's eight congressional seats by the state legislature which had been vetoed by the governor was held invalid. In an opinion by Mr. Justice Hughes, the Court enjoined the election of representatives under the existing apportionment and ordered that the eight representatives be selected state-wide on an at-large basis if the state legislature should fail to reapportion the state prior to the election. Similar relief was granted in **Carroll v. Becker**, 285 U. S. 380, 52 S. Ct. 402, 72 L. Ed. 807 (1932), and **Koenig v. Flynn**, 285 U. S. 375, 52 S. Ct. 403, 76 L. Ed. 805 (1932).

In **Wood v. Broom**, 287 U. S. 1, 53 S. Ct. 1, 77 L. Ed. 131 (1932), the Court rested its decision on a ground which plainly could not have been reached if the juris-

diction of Congress were exclusive. After the lower court had enjoined the election of representatives under an apportionment enacted by the Mississippi legislature on grounds that it conflicted with the federal statutory requirement that Congressional districts contain, as nearly as practicable, an equal number of inhabitants, this Court reversed. The majority held the provision to have been impliedly repealed by its omission by Congress from the Act of 1929. Similarly in **Colegrove v. Green**, 328 U. S. 549, 66 S. Ct. 1198, 90 L. Ed. 1432 (1946), a majority of this Court squarely held the issue of the validity of an apportionment of congressional districts to be subject to its jurisdiction, rejecting the contention of Mr. Justice Frankfurter that the matter had been exclusively committed by the Constitution to the jurisdiction of Congress.

The issues presented by this appeal will not be rendered moot by the November general election. The Georgia statutes creating the unequal apportionment of congressional districts will not expire with the general election but will continue to infringe the constitutional rights of the Appellants in all future elections unless restrained by this Court. The general election of November, 1962, will be the completion of but one more of a long series of violations of Appellants' constitutional rights which have occurred in every election since the enactment of the apportionment in 1932 and which threatens to continue indefinitely until the statute is invalidated. **Porter v. Lee**, 328 U. S. 246, 66 S. Ct. 1096, 90 L. Ed. 1199 (1946). It is thus apparent that the controversy is a continuing one which will not be mooted by the general election. See **Southern Pacific Terminal Company v. Interstate Commerce Commission**, 219 U. S. 498, 31 S. Ct. 297, 55 L. Ed. 310 (1911); **Walling v. Helmrigh**, 323 U. S. 37, 65 S. Ct. 11, 89 L. Ed. 29 (1944).

In a long series of decisions, this Court has dismissed as moot actions which were brought to prevent the hold-



ing of a particular election after such election had been held. **Mills v. Green**, 149 U. S. 308, 13 S. Ct. 876, 37 L. Ed. 747 (1893); **Jones v. Montague**, 194 U. S. 147, 24 S. Ct. 611, 48 L. Ed. 913 (1904); **Richardson v. McChesney**, 218 U. S. 487, 31 S. Ct. 43, 54 L. Ed. 1121 (1910); **Love v. Griffith**, 266 U. S. 32, 45 S. Ct. 12, 69 L. Ed. 157 (1924); **Blackman v. Stone**, 300 U. S. 641, 57 S. Ct. 514, 81 L. Ed. 856 (1937); **Cook v. Fortson**, 329 U. S. 675, 67 S. Ct. 21, 91 L. Ed. 596 (1946). Indeed, it had no other alternative for, after the election had been held, there remained only an abstract or hypothetical controversy (**California v. San Pablo & Tulare R. R.**, 149 U. S. 308, 13 S. Ct. 876, 37 L. Ed. 747 [1893]) and the court was powerless to grant the relief sought. Because of the continuing application of the apportionment to all future elections of Representatives, the conduct of the general election will not deprive this Court of the power to grant substantial and effective relief either by granting a declaratory judgment establishing the constitutional invalidity of the apportionment or by enjoining the individual defendants from certifying candidates and counting ballots on the basis of this inequitable apportionment of congressional districts in all future elections.

It is clear that after the general election, this case will continue to present a case or controversy within the jurisdiction of the Supreme Court. In such circumstances, this Court cannot avoid the obligation imposed by the Constitution to render an adjudication on the merits of the issues presented. As Chief Justice John Marshall said in **Cohens v. Virginia**, 19 U. S. (6 Wheat.) 264, 404, 5 L. Ed. 257, 291 (1821):

"It is most true that this court will not take jurisdiction if it should not; but it is equally true, that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure be-

cause it approaches the confines of the Constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution."

### CONCLUSION.

The jurisdiction of the Supreme Court to review this case on appeal is clear and unquestionable. Because of the importance of the issues involved and the apparent error in the judgment of the District Court, Appellants urge that the Supreme Court give plenary consideration to the case and permit briefs and oral argument on the merits.

Respectfully submitted,

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### Proof of Service.

I, DeJongh Franklin, attorney for James P. Wesberry, Jr., and Candler Crim, Jr., appellants herein, and a mem-

ber of the Bar of the Supreme Court of the United States, hereby certify that on the 10<sup>th</sup> day of October, 1962, I served copies of the foregoing Jurisdictional Statement on the appellees therein named, by mailing copies in a duly addressed envelope, with postage prepaid, to Eugene Cook, Attorney General, State of Georgia, State Law Building, Atlanta, Georgia, attorney of record for said appellees.

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berry, Jr., and Candler  
Crim, Jr., Appellants.



**APPENDIX A.**

**Opinion and Judgment of the Court Below.**

In the  
United States District Court for the  
Northern District of Georgia,  
Atlanta Division.

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Civil Action No. 7889.

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James P. Wesberry, Jr., and Candler Crim, Jr.,  
Plaintiffs,

v.

S. Ernest Vandiver, as Governor of the State of Georgia,  
and Ben W. Fortson, Jr., as Secretary of the  
State of Georgia,  
Defendants.

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Before Tuttle and Bell, Circuit Judges, and Morgan, Dis-  
trict Judge.

Circuit Judge Bell:

This is the third in a series of suits filed in this court immediately following the decision of the Supreme Court in **Baker v. Carr**, 1962, 369 U. S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663. In **Sanders v. Gray**, N. D. Ga., 1962, 203 F. Supp. 158,<sup>1</sup> we struck down the Georgia County Unit System of primary elections in the form in which it then existed because of resulting invidious discrimination to the plain-

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<sup>1</sup> Now pending on appeal in the Supreme Court.

tiffs who were residents of Fulton County. Then in **Toombs v. Fortson**, Civil Action No. 7883, N. D. Ga., 1962, 205 F. Supp. 248, again on the basis of resulting invidious discrimination, we found the General Assembly of Georgia to be malapportioned and required apportionment of at least one body of the Assembly according to population. In that case, and for the same reason, we struck down the statute requiring the election of senators on a rotation basis among the counties in each senatorial district. We withheld injunctive and other relief pending action on the part of the responsible state officials, executive and legislative, before the 1963 session of the General Assembly appropriate to ending the proscribed discrimination. Our action in each of these cases was premised on the denial to plaintiffs of equal protection of the laws under the Fourteenth Amendment to the Constitution.

Plaintiffs here are residents and qualified voters of Fulton County, Georgia, and as such are entitled to vote in the primary and general elections for members of the House of Representatives of the Congress of the United States from the Fifth Congressional District of Georgia. They likewise premise their cause on the Fourteenth Amendment, seeking the invalidation of the Georgia statute which sets up the districts for the election of the ten members of the House from Georgia and which provides the method of election. Georgia Code, Section 34-2301. They contend also that this statute is void as being contrary to Art. I, Section-2 of the Constitution of the United States which provides that members of the House of Representatives shall be elected by the people.<sup>2</sup>

Jurisdiction and three-judge status are based on Title 28, U. S. C. A.; Sections 1343, 2201-2202, 2281, 2284, and 42 U. S. C. A., Sections 1983 and 1988. Injunctive relief is

<sup>2</sup> "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States."

sought against the defendants, the Governor and Secretary of State of Georgia, to the end that no elections may be held except on a state-at-large basis pending redistricting on "an equitable and representative" basis.

Georgia was awarded two members in the House of Representatives of the Congress under the Act of April 14, 1792, which apportioned representatives among the several states. 1 Stat. 253 (1792). The number of representatives allocated to Georgia increased gradually, based on population, from two to nine under the census of 1830. 2 Stat. 669 (1811); 3 Stat. 651 (1822); 4 Stat. 516 (1832). And elections in some states were on a district basis but in Georgia and in some of the other states they were on a state-at-large basis for nearly fifty years. Congress, in 1842, provided that representatives, where a state was entitled to more than one representative, should be elected from districts composed of contiguous territory, equal in number to the number of representatives to which a state might be entitled with no one district electing more than one representative. 5 Stat. 491 (1842). Georgia set up the district system in 1843 based on the 1840 census and has adhered to it at all times since then, including the election of members to the Congress of the Confederate States of America during the period of secession. Ga. Code, 1861, p. 12.

Districts were not required by the Apportionment Act of 1852, 9 Stat. 433 (1852), but were again required in 1862. 12 Stat. 572 (1862). In 1872 another element was added to the system. Not only must each district be of contiguous territory but also of an equal number of inhabitants as nearly as practicable. 17 Stat. 28 (1872). Under this Act Georgia was allocated nine representatives. Congress continued this system in 1882 and 1891 and the number of representatives from Georgia was increased to ten in 1882 and eleven under the 1891 Act. 22 Stat. 5



(1882); 26 Stat. 735 (1891). In 1901 Congress added the requirement that the districts be compact, 31 Stat. 733 (1901), and the 1911 Apportionment Act provided that:

“Representatives to the Sixty-third and each subsequent Congress shall be elected by districts composed of a contiguous and compact territory and containing as nearly as practicable an equal number of inhabitants.” 37 Stat. 13, 14 (1911).

There was no reapportionment after the census of 1920 and from 1910 to 1930 Georgia had twelve seats in the House. The Reapportionment Act of 1929, 46 Stat. 13, 26 (1929), provided that the House be reapportioned after each decennial census but failed to re-enact the requirements of compactness, contiguity, and equality of population in each district. 46 Stat. 13 (1929), Title 2, U. S. C. A., Section 2.

Under that Act Georgia lost two seats in the House and the statute here under attack followed in 1931. Ga. Laws, 1931, p. 46; Code Section 34-2301, et seq. The General Assembly divided the state into ten congressional districts on the basis of allocating the several counties to the respective districts, and there have been no changes in the allocations to date.

The facts are not in dispute and are ample for final decision on the merits. The following table shows the population of each congressional district in 1930 as compared with 1960:

| District      | Population,<br>1930 | Population,<br>1960 |
|---------------|---------------------|---------------------|
| First .....   | 328,214             | 379,933             |
| Second .....  | 263,606             | 301,123             |
| Third .....   | 339,870             | 422,198             |
| Fourth .....  | 261,234             | 323,489             |
| Fifth .....   | 396,112             | 823,680             |
| Sixth .....   | 281,437             | 330,235             |
| Seventh ..... | 271,680             | 450,470             |
| Eighth .....  | 241,847             | 291,185             |
| Ninth .....   | 218,496             | 272,154             |
| Tenth .....   | 289,267             | 348,379             |

The burden of the complaint is the disproportionate population of the Fifth Congressional District as compared with the other districts. It is comprised of Fulton, DeKalb and Rockdale Counties. The growth of Fulton and DeKalb Counties has been spectacular in recent years with the population of DeKalb increasing from 70,278 in 1930 to 256,782 in 1960, and that of Fulton from 318,587 to 556,326. It is to be noted that the population of each of the ten congressional districts has increased from a low of slightly under fifteen per cent in the Second District to just over one hundred eight per cent in the Fifth District.

It is the position of plaintiffs that the population of each district should be within a range of ten to fifteen per cent of the average district population based on a division of the number of districts into the total population of the state.<sup>3</sup> The population of Georgia, according to the 1960 census, was 3,942,936. For our purposes,<sup>4</sup> we will take 394,000 under the theory of plaintiffs as an average and ex-

<sup>3</sup> An adoption of the view of the American Political Science Association.

<sup>4</sup> To the nearest one thousand.

amine the facts using the suggested variance of fifteen per cent. Under this theory no district should have a population of more than 453,000 nor less than 335,000. Applying the same theory to the districts as constituted in 1931 when the population of Georgia under the 1930 census was 2,908,506, an approximate average per district of 291,000, no district should have had a population of more than 335,000 nor less than 247,000.

The aforesaid table demonstrates that only the Fifth and Ninth Districts substantially varied from the fifteen per cent standard suggested by plaintiffs on the 1930 basis. The Second, Eighth and Ninth Districts fell substantially more than fifteen per cent short of the average, according to the 1960 census, while the Fifth dramatically exceeded the variance.

We hasten to add that we neither expressly nor impliedly adopt any mathematical standard. We know of no basis for an exact standard. Cf. *Sanders v. Gray*, supra, where sufficient basis existed. We use plaintiffs' suggested standard here in amplification of their contentions.

It is clear by any standard however that the population of the Fifth District is grossly out of balance with that of the other nine congressional districts of Georgia and in fact, so much so that the removal of DeKalb and Rockdale Counties from the District, leaving only Fulton with a population of 556,326, would leave it exceeding the average by slightly more than forty per cent. It is apparent that giving effect to any reasonable population based standard will require the division of Fulton County into more than one district, something not heretofore done in Georgia. The population of Fulton County alone exceeds that of the nearest district in size—the seventh—by over twenty three per cent. A chain reaction effecting the make up of every congressional district in the state



may be set off. We say this to demonstrate the legislative nature of the problem where a broad statewide approach will be needed. We also point out that such a formula as suggested by plaintiffs, requiring as it would the division of Fulton County, may or may not be agreeable to the majority of the voters of Fulton County, assuming that they are entitled to a voice in the matter, and this again points up the desirability of solution if at all possible in the legislative forum. Of course, a division of Fulton County has not been suggested, only the formula.

The problem here is not peculiar to Georgia. For example, Florida has recently substantially changed its congressional districts by reason of the addition of four new congressmen making a total of twelve. The districts there now range in population from a low of 241,250 to a high of 660,345 as compared to the Florida average of 412,630 a variance greatly exceeding the suggested standard. Dade County with a population of 935,047 is divided among two districts, one consisting of a part of Dade County only, and the other consisting of an adjoining county and the balance of Dade County. Duvall, Hillsborough, and Pinellas Counties each constitutes a district under the new plan with populations respectively of 455,411, 397,788, and 374,665, a sharp example of the variance in population per district if counties are to continue as a basis for districts except where the population of a county is so large as to require division.

There are 435 congressional districts in the United States. Twenty two congressmen will be elected state-at-large in 1962. Of the remaining 413, the Fifth District of Texas has the largest population, 951,527. The Fifth District of Georgia, here under discussion is next. There are twenty two districts with populations exceeding 600,000. Eighty districts have populations more than fifteen per

cent above the state average, while ninety have populations of more than fifteen per cent below the state district average. Using ten per cent as a variance, or tolerance, one hundred eight districts are above and one hundred twenty five are below the average, a total of two hundred thirty three or more than one-half of all congressional districts. These figures in no way reflect on the problem of deprivation of rights of the type here asserted through use of the gerrymander, a problem with which we are not concerned here but one that could well be within the rationale of any decision reached.

The following table shows the considerable difference in population in the named states between the districts having the highest and lowest number of inhabitants. Even a cursory examination of it indicates that in virtually no state do the districts contain "as nearly as practicable an equal number of inhabitants" as was formerly required by the Congress.

The table is based on only four hundred thirteen out of the total of four hundred thirty five congressional districts. Only forty two states are listed. The twenty two of the seats to be filled by elections-at-large are: Alabama—8, Alaska—1, Connecticut—1, Delaware—1, Hawaii—2, Maryland—1, Michigan—1, Nevada—1, New Mexico—2, Ohio—1, Texas—1, Vermont—1, and Wyoming—1. The districts shown are as constituted January 1, 1963 while the populations are according to the 1960 census.

| State          | Average<br>Population<br>Per<br>District | High    | Low     |
|----------------|--|---------|---------|
| Arizona        | 434,053                                  | 663,510 | 198,236 |
| Arkansas       | 446,568                                  | 575,385 | 332,844 |
| California     | 434,009                                  | 591,822 | 301,172 |
| Colorado       | 438,486                                  | 653,954 | 195,551 |
| Connecticut    | 507,046                                  | 653,589 | 318,942 |
| Florida        | 412,629                                  | 660,345 | 237,235 |
| Georgia        | 394,311                                  | 823,680 | 272,154 |
| Idaho          | 333,595                                  | 409,949 | 257,242 |
| Illinois       | 420,100                                  | 557,221 | 277,169 |
| Indiana        | 423,863                                  | 697,567 | 290,596 |
| Iowa           | 393,933                                  | 403,442 | 353,156 |
| Kansas         | 435,722                                  | 539,592 | 373,583 |
| Kentucky       | 434,022                                  | 610,947 | 350,839 |
| Louisiana      | 407,127                                  | 536,029 | 263,850 |
| Maine          | 484,632                                  | 505,465 | 484,632 |
| Maryland       | 442,955                                  | 711,045 | 243,570 |
| Massachusetts  | 429,048                                  | 478,962 | 376,336 |
| Michigan       | 434,621                                  | 802,894 | 177,431 |
| Minnesota      | 426,733                                  | 482,872 | 375,475 |
| Mississippi    | 435,628                                  | 608,441 | 295,072 |
| Missouri       | 431,881                                  | 505,854 | 381,602 |
| Montana        | 337,383                                  | 400,573 | 274,194 |
| Nebraska       | 470,443                                  | 530,507 | 404,695 |
| New Hampshire  | 303,460                                  | 331,318 | 275,103 |
| New Jersey     | 404,452                                  | 585,586 | 255,165 |
| New York       | 409,324                                  | 469,968 | 348,940 |
| North Carolina | 414,195                                  | 491,461 | 277,861 |
| North Dakota   | 316,223                                  | 333,290 | 299,156 |
| Ohio           | 422,017                                  | 725,156 | 236,288 |
| Oklahoma       | 388,047                                  | 552,863 | 227,692 |
| Oregon         | 442,171                                  | 522,813 | 265,164 |
| Pennsylvania   | 419,235                                  | 553,154 | 303,026 |
| Rhode Island   | 429,744                                  | 459,706 | 399,782 |
| South Carolina | 397,099                                  | 531,555 | 272,220 |
| South Dakota   | 340,257                                  | 497,669 | 182,845 |
| Tennessee      | 396,343                                  | 627,019 | 223,387 |
| Texas          | 435,439                                  | 951,527 | 216,371 |
| Utah           | 445,313                                  | 572,654 | 317,973 |
| Virginia       | 396,694                                  | 539,618 | 312,890 |
| Washington     | 407,602                                  | 510,512 | 342,540 |
| West Virginia  | 372,084                                  | 422,046 | 303,098 |
| Wisconsin      | 395,177                                  | 530,316 | 236,870 |

It is readily apparent from these undisputed facts that plaintiffs, not unlike many millions of other citizens



throughout the Republic, are being deprived of equal treatment arising from the excess in population of their congressional district as compared with that of other districts in Georgia. Such unequal or discriminatory treatment to be actionable, if judicially cognizable, a matter to be hereinafter discussed, must reach the point of invidiousness. **Baker v. Carr**, *supra*; **Sanders v. Gray**, *supra*, and **Toombs v. Fortson**, *supra*.

Our jurisdiction of a matter such as this can no longer be doubted, and it is settled that plaintiffs asserting rights of the type here involved have standing to sue. **Baker v. Carr**; **Wood v. Broom**, 1932, 287 U. S. 1, 72 S. Ct. 648, 77 L. Ed. 131; **Colegrove v. Green**, 1946, 328 U. S. 549, 66 S. Ct. 1198, 90 L. Ed. 1432; **Scholle v. Hare**, 1962, 8 L. Ed. 2d 1, and **W. M. C. A., Inc., v. Simon**, 1962, 30 L. W. 3383. We hold, too, that the issue presented is justiciable, but that question requires some elaboration.

And if the issue were one solely of state action under the Fourteenth Amendment, separate and apart from rights and duties devolving on the Congress under the Constitution and from congressional action or inaction, our problem would be greatly simplified. We would apply the test for invidious discrimination by considering all relevant factors, including a determination of rationality of state policy behind the statutory system, arbitrariness, whether the system has a historical basis in our political institutions, together with the presence or absence of political remedy. **Baker v. Carr**; **Sanders v. Gray**, and **Toombs v. Fortson**. The test is to be made on the sum of all of these factors and the asserted violation must be clear for we are dealing with the constitutionally based relationship between federal and state governments. **American Federation of Labor v. Watson**, 1946, 327 U. S. 582, 66 S. Ct. 761, 90 L. Ed. 873; **McGowan v. Maryland**, 1961, 366 U. S. 420, 81 S. Ct. 1101, 66 L. Ed. 2d 393.

If the state action—here the statute setting up congressional districts—offends fundamental political concepts inherent in a republican form of government, giving due regard to each factor and the rights of the plaintiffs and all others in their class as compared to those similarly situated in other congressional districts of Georgia, the statute must be stricken because of being discriminatory to the degree of invidiousness.

In our view the statute here when enacted reflected a rational state policy to set up the congressional districts in Georgia with some reasonable relation to population. On the other hand it now reflects a system which has become arbitrary through inaction when considered in the light of the present population of the Fifth District and as measured by any conceivable reasonable standard. The statute does have a historical basis in that it is of the type used in the remaining states of the Union with but few exceptions for more than one hundred years, and of a type that was required by the Congress from 1872 through 1929. As to political remedy, we only recently required by our decision in **Toombs v. Fortson**, that the General Assembly of Georgia be fairly apportioned. It may well be that the arbitrariness which we find to be present as the statute relates to the Fifth District and to the rights of plaintiffs will be corrected by the reapportioned Assembly.

Our view is buttressed by a due regard for the admonition in **Baker v. Carr** that a "judicially manageable standard" be adopted. This dictates that a reasonable time be afforded for the normal state governmental processes, where there is a substantial chance of relief as we believe there is, to run their course.

So tested, from the standpoint of Fourteenth Amendment rights or the right to choose Representatives under

Art. 1, Section 2 of the Constitution, we do not now find proscribed invidiousness. We would deny relief at this time but retain jurisdiction to again consider the contentions of plaintiffs, if necessary, after the expiration of a reasonable time for relief by way of political remedy.

But we cannot rest our decision at or on this point because the problem goes deeper. We are not dealing simply with state action under the Fourteenth Amendment or in violation of Art. I, Section 2 of the Constitution for the state action complained of is inextricably subject to the rights allocated to Congress under the Constitution. And defendants are entitled to their due—a final decision.

As was said for the majority in *Colegrove v. Green*, *supra*, where similar relief was sought in a suit alleging malapportioned congressional districts:

“The petitioners urge with great zeal that the conditions of which they complain are grave evils and offend public morality. The Constitution of the United States gives ample power to provide against these evils. But due regard for the Constitution as a viable system precludes judicial correction. Authority for dealing with such problems resides elsewhere. Article I, Section 4 of the Constitution provides that ‘The Time, Places and Manner of holding Elections for . . . Representatives, shall be prescribed in each state by the Legislature thereof; but the Congress may at anytime by law make or alter such Regulations . . .’ The short of it is that the Constitution has conferred upon Congress exclusive authority to secure fair representation by the States in the popular House and left to that House determination whether States have fulfilled their responsibility. If Congress failed in exercising its powers, whereby standards of fairness are offended, the remedy ultimately lies with the people. Whether Congress faith-



fully discharges its duty or not, the subject has been committed to the exclusive control of Congress. An aspect of government from which the judiciary, in view of what is involved, has been excluded by the clear intention of the Constitution cannot be entered by the federal courts because Congress may have been in default in exacting from States obedience to its mandate."<sup>5</sup>

Only seven members of the court participated in this decision, two concurring in the opinion by Justice Frankfurter and Justice Rutledge concurring in the result to make the majority. His concurrence was based on the view that the complaint should be dismissed for want of equity and we perceive this to be the holding of the majority. He recognized that the court had jurisdiction and that a justiciable issue was presented, citing **Smiley v. Holm**, 1932, 285 U. S. 355, 52 S. Ct. 397, 76 L. Ed. 795. He pointed out that four of the nine justices in **Wood v. Broom**, *supra*, where the majority dismissed a similar suit on the ground that there was no congressional requirement after the 1929 Apportionment Act of compactness, contiguity or equality in the number of inhabitants for congressional districts, were of the opinion that dismissal should have been for want of equity. His basis for the want of equity holding was that the court would be pitched into delicate relation to the functions of state officials and the Congress compelling them to take action which they have declined to take voluntarily, and because the short

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<sup>5</sup> The Constitution enjoins upon Congress the duty of apportioning Representatives "among the several states . . . according to their respective numbers. Article I, Section 2. Congress has at times been heedless of this command and not apportioned according to the requirements of the census. It has never occurred to anyone that the court could mandamus the Congress to perform its mandatory duty to apportion. *Colegrove v. Green*, pp. 554-555.

Article I, Section 5 of the Constitution makes each House the sole judge of the qualifications of its own members.

time remaining before the election made effective relief doubtful. He thought a state-at-large election would deprive Illinois citizens of representation by districts "which the prevailing policy of Congress demands;" citing 46 Stat. 26, c. 28, as amended, Title 2, U. S. C. A., Section 2a. He concluded:

"If the constitutional provisions on which appellants rely give them the substantive rights they urge, other provisions qualify those rights in important ways by vesting large measures of control in the political subdivisions of the government and the state. There is not, and could not be except abstractly, a right of absolute equality in voting. At best there could be only a rough approximation. And there is obviously considerable latitude for the bodies vested with those powers to exercise their judgment concerning how best to attain this, in full consistency with the Constitution."

"The right here is not absolute. And the cure sought may be worse than the disease."

Justices Douglas and Murphy joined Justice Black in a dissent. It was their view that the case involved the federally-protected right to vote, Article I, Section 2, Const., Fourteenth Amendment, Section 2, and it was implicit in their dissent that they considered this right to be absolute, equating it with a denial of the franchise on account of race, creed or color. Cf. **Ex parte Yarbrough**, 1884, 110 U. S. 651, 4 S. Ct. 152, 28 L. Ed. 274; **Nixon v. Herndon**, 1927, 273 U. S. 536, 47 S. Ct. 446, 71 L. Ed. 759; **Lane v. Wilson**, 1939, 307 U. S. 268, 59 S. Ct. 872, 83 L. Ed. 1281; and **United States v. Classic**, 1941, 313 U. S. 299, 61 S. Ct. 1031, 85 L. Ed. 1368. They would have invalidated the state apportionment statute and afforded plaintiffs the right to vote in state-at-large elections. They thought the state had violated a duty to bring about ap-

proximately equal representation of citizens in the Congress.

We have dwelt at some length on the **Colegrove** case because it is decisive here. It is in point and a controlling precedent if still in force. It has been cited as authority in cases involving only state action where perhaps it is no longer a controlling authority in view of **Baker v. Carr**. Cf. **South v. Peters**, 1950, 339 U. S. 276, 70 S. Ct. 641, 94 L. Ed. 834; **Kidd v. McCanless**, 1956, 352 U. S. 920, 77 S. Ct. 223, 1 L. Ed. 2d 157; **Radford v. Gary**, 1957, 352 U. S. 991, 77 S. Ct. 559, 1 L. Ed. 2d 540. We make our determination of its efficacy by a consideration of the preservative treatment given it in **Gomillion v. Lightfoot**, 1960, 364 U. S. 339, 81 S. Ct. 125, 5 L. Ed. 110 and **Baker v. Carr**.

**Gomillion** involved a statute gerrymandering the City of Tuskegee, Alabama, so as to deny the vote to colored citizens. Justice Frankfurter, author of **Colegrove**, wrote the decision for the eight justices making the majority, Justice Douglas concurring in the result but adhering to his dissent in **Colegrove**, and **South v. Peters**, supra. In distinguishing **Colegrove** it was said that the dismissal of the complaint was affirmed "on the ground that it presented a subject not meet for adjudication." The court stated that the decisive facts of **Gomillion** were wholly different from the considerations found controlling in **Colegrove**. The complaint in **Colegrove** was only to the dilution of the strength of votes as a result of legislative inaction over a course of many years as compared with affirmative legislative action to deprive complainants of their votes in **Gomillion**.

" . . . When a legislature thus singles out a readily isolated segment of a racial minority for special discriminatory treatment, it violates the Fifteenth Amend-



ment. In no case involving unequal weight in voting distribution that has come before the Court did the decision sanction a differentiation on racial lines whereby approval was given to unequivocal withdrawal of the vote solely from colored citizens. Apart from all else, these considerations lift this controversy out of the so-called 'political' arena and into the conventional sphere of constitutional litigation." pp. 346-347.

. . . . .

"... While in form this is merely an act redefining metes and bounds, if the allegations are established, the inescapable human effect of this essay in geometry and geography is to despoil colored citizens, and only colored citizens, of their theretofore enjoyed voting rights. That was not **Colegrove v. Green.**" p. 347.

Thus **Gomillion** taught in 1960 that **Colegrove** was still a living precedent and we must determine if it was overruled or sapped of its strength by **Baker v. Carr**. That case, in one fell swoop, lifted state political action offending the Fourteenth Amendment from the ancient doctrine whereunder it was thought improper for courts to enter the "political thicket" so often involved in reapportionment and related problems.

We have carefully considered its import and have noted that the court was at pains to distinguish **Colegrove**. The rationale of the decision goes no further than to open the doors of the courts for the purpose of adjudicating consistency of state action with the Federal Constitution where no question is concerned involving a coequal political branch of the government. The treatment of **Colegrove** in **Gomillion** was reiterated. The court stated that **Colegrove** appeared to be based on a refusal to exercise equity's powers.

The various concurring opinions in **Baker v. Carr** shed much light on the meaning of the majority opinion. Justice Douglas put aside the problem of "political" questions involving the distribution of power between the Court, Congress and the Chief Executive, and noted that the power of Congress to prescribe qualifications for voters and thus override state law was not in issue. He stated that the Federal Judiciary does not intervene where the Constitution assigns a particular function wholly and indivisibly to another department, and then in closing stated that the state legislative apportionment question before the court was removed from the impediment of **Colegrove** and the cases following it by the treatment given those cases in the majority opinion, i. e., that they were based on a refusal to exercise equity's power. Justice Clark also distinguished **Colegrove**. Justice Frankfurter in dissenting stated that the appellants sought to distinguish **Colegrove** on the ground that congressional, not state legislative, apportionment was involved, and we believe that this is the course that the majority of the court took. Justice Harlan described the holding in **Colegrove** as a declination by the court to adjudicate a challenge to the apportionment of seats by a state in the federal House of Representatives in absence of a controlling act of Congress, citing **Wood v. Broom**, supra.

It would be extraordinary indeed for the court to have departed any more than was absolutely necessary from the previous standard of withholding judicial relief in matters of the kind involved in **Baker v. Carr**, and a good reason to preserve the **Colegrove** doctrine while at the same time reversing the body of law as it concerned state action alone was that fairly apportioned state legislatures might well alleviate congressional district disparity. But whatever the reason we think **Colegrove** stands and so long as it does it will be our guide.

We do not deem it to be a precedent for dismissal based on the non-justiciability of a political question involving the Congress as here, but we do deem it to be strong authority for dismissal for want of equity when the following factors here involved are considered on balance: a political question involving a coordinate branch of the federal government; a political question posing a delicate problem difficult of solution without depriving others of the right to vote by district, unless we are to redistrict for the state; relief may be forthcoming from a properly apportioned state legislature; and relief may be afforded by the Congress.<sup>6</sup>

Being persuaded of a want of equity in the position of plaintiffs to the extent that no cognizable constitutional claim is presented under the facts and subsisting authorities, their cause must be and is Dismissed.

This 20th day of June, 1962.

Griffin B. Bell,  
United States Circuit Judge,  
Fifth Circuit.

Lewis R. Morgan,  
United States District Judge,  
Northern District of Georgia.

---

<sup>6</sup> Representative Celler in a hearing before the Committee on the Judiciary, House of Representatives, recently stated that it was impracticable to draw congressional district lines in Washington. He stated that the economic and social interests of an area, its topography and geography, means of transportation, the desires of the inhabitants as well as their elected representatives, and the political factors should all be considered and that state legislatures are far better equipped to determine and evaluate those factors than either the Congress or any national agency it might designate to do so. Under the proposed legislation the establishment of districts would be subject to review by the Federal District Courts. Hearing, June 24, 1959, before Subcommittee No. 2 of the Committee on the Judiciary, House of Representatives, 86th Congress, 1st Sess., on House Resolutions 73, 575, 8266 and 8473.



**Tuttle, Circuit Judge, Concurring in Part and Dissenting in Part:**

I concur in that part of the Court's opinion that denies an injunction at this time. I also concur in the statement of the facts. Because, however, I disagree with the conclusion that the suit should be dismissed, and because my conclusion that the injunction should be denied is based on somewhat different reasoning than that of my colleagues, I consider it appropriate to state my separate views.

The basis on which I would hold that the Court should now decline to grant the relief sought by these plaintiffs is simple. In **Baker v. Carr** the Supreme Court stressed as one of the factors which it considered as warranting a federal court's granting relief in a case of legislative malapportionment within a state the absence of any practical means by which the plaintiffs might hope to obtain relief at the hands of the state legislature. We also stressed this circumstance in the earlier cases decided by this Court. See **Sanders v. Gray**, N. D. Ga., 1962, 203 F. Supp. 158, and **Toombs v. Fortson**, N. D. Ga., 1962, 205 F. Supp. 248.

In view of the fact that this Court has now held that the Legislature of the State of Georgia must be apportioned in such a manner as to make it more responsive to population, it can not be said now that there is no reasonable likelihood that the Georgia Legislature as properly constituted will fail in the future to rectify the gross inequalities that we find now exist in the Georgia Congressional Districts. I think, therefore, that it is a part of judicial statesmanship for this Court to refrain from stepping into this particular area until after the Legislature of the State of Georgia has had a fair opportunity to correct the present abuses.

The point of difference between my views and those of my colleagues is that I am not convinced that if the Georgia Legislature persists in the future in maintaining congressional districts as grossly disproportionate as they are today, the federal courts would have no power to take cognizance of such a situation and declare the state apportionment laws unconstitutional.

The view of the majority appears to be that even though the State Legislature takes no remedial action, the plaintiffs may not obtain the relief they seek at the hands of this Court. This, they say, results from the fact that the United States Congress has the power under Article I, Section 4 of the Constitution to require the state governments to eliminate the inequalities like that here complained of. The provisions of that Section are:

“The times, places and manner of holding elections for . . . Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations . . .”

The majority opinion reads the several opinions of the Justices of the Supreme Court in **Baker v. Carr** as perpetuating what my colleagues construe to be the rationale of **Colegrove v. Green**, 328 U. S. 549, that is that where Congress has the power to deal with a matter which the States may also regulate, federal courts should not interfere with action taken by the State, even though in violation of the Fourteenth Amendment to the Constitution, because “due regard for the Constitution as a viable system precludes judicial correction.” 328 U. S. 549, at 554.

It must be borne in mind that the opinion which contained the foregoing language was approved in whole by only three members of the Supreme Court out of the seven who participated in the decision. A fourth member of the Court, thus making a majority, concluded that the judg-

ment of the lower court should be affirmed, but Justice Rutledge's views make it clear that he did not accept the theory or principle that it was beyond the competence of the federal courts to grant the relief sought, but rather that he felt the plaintiffs had not demonstrated their right to equitable relief under the circumstances, including the fact that the upcoming election was so imminent as to make it "doubtful whether action could, or would, be taken in time to secure for petitioners the effective relief they seek."

I am of the firm conviction that the majority opinion of the Supreme Court in **Baker v. Carr** makes it clear that nothing said in any of the opinions in **Colegrove v. Green** denies to the federal courts the power to grant relief in a congressional district case if the complaint and proof establish a right to equitable relief from grossly disproportionate districting. On page 226 of its opinion in **Baker v. Carr**, the majority outlines what constitutes a non-justiciable "political question." It does this by enumerating the type of question that the Court had theretofore held to be non-justiciable "political questions."

"We have no question decided, or to be decided, by a political branch of government co-equal with this Court. Nor do we risk embarrassment of our Government abroad, or grave disturbance at home if we take issue with Tennessee as to the constitutionality of her action here challenged. Nor need the appellants, in order to succeed in this action, ask the Court to enter upon policy determinations for which judicially manageable standards are lacking."

As to the first of these questions referred to by the Court, which is the one which the majority here feels prevents judicial action by this Court, I consider it necessary to point out the following: Complete relief can be granted to the plaintiffs here without the slightest inter-



ference with prerogatives or powers of the Federal Congress. That body, under the reapportionment statutes referred to in the majority opinion, has directed the State of Georgia to divide the people of the State into congressional districts. Presumably Congress intended for the State to do so without constitutional standards. The fact that Congress did not expressly prescribe that congressional districts should be reasonably equal as to population does not, of course, prevent the State from districting according to equal population, nor, it seems to me, does it excuse the State from failing to do so if a failure to do so works an unconstitutional deprivation on the plaintiffs.

I find nothing in either **Colegrove v. Green** or in the language of the Supreme Court in **Baker v. Carr** discussing **Colegrove** in conflict with the views expressed here: that where Congress has directed a State to "regulate" a matter which the Constitution itself says shall initially be dealt with by the State, the State may not then, immune from judicial interference, exercise such power in an unconstitutional manner merely because Congress also has power to "at any time by law make or alter such regulations."

It is, therefore, my opinion that this Court should deny the injunction at this time, but that it should retain jurisdiction of the cause in order to give the State Legislature an opportunity to remedy what this Court has unanimously found to constitute a gross inequity. In default of such action by the State within a reasonable time, the Court should proceed to grant the relief prayed for.

This 20th day of June, 1962.

Elbert P. Tuttle,  
United States Circuit Judge,  
Fifth Circuit.

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IN THE  
**SUPREME COURT OF THE UNITED STATES.**

OCTOBER TERM, 1962

Number 22

**JAMES P. WESSBERRY, JR., and CANDLER CRIM, JR.,**  
Appellants,

**E. ERNEST VANDIVER, as Governor of the State of Georgia, and  
SEN W. FORTSON, JR., as Secretary of State of  
the State of Georgia,**  
Appellees.

On Appeal from the United States District Court for the  
Northern District of Georgia.

**MOTION TO AFFIRM OR DISMISS WITH  
SUPPORTING BRIEF.**

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November 6, 1962.

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IN THE  
**SUPREME COURT OF THE UNITED STATES.**

OCTOBER TERM, 1962.

Number 507.

**JAMES P. WESBERRY, JR., and CANDLER CRIM, JR.,**  
Appellants,

vs.

**S. ERNEST VANDIVER, as Governor of the State of Georgia, and  
BEN W. FORTSON, JR., as Secretary of State of  
the State of Georgia,**  
Appellees.

On Appeal from the United States District Court for the  
Northern District of Georgia.

**MOTION TO AFFIRM OR DISMISS.**

To the Honorable Chief Justice and Associate Justices of  
the Supreme Court of the United States:

Come now S. Ernest Vandiver, as Governor of the State of Georgia, and Ben W. Fortson, Jr., as Secretary of State of the State of Georgia, the Appellees herein, and, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move the Court: (1) to affirm the judgment from which the appeal in the above-entitled cause purports to have been taken, on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument; or, in the alternative, (2) to dismiss this

appeal in the above-entitled cause, (a) on the ground that the matters in controversy in this action and upon this appeal have become abstract and moot by virtue of the holding of the General Election on November 6, 1962, and the election therein of the Representatives of the people of Georgia in the House of Representatives of the Congress of the United States, or, (b) on the ground that it presents no substantial federal question.

This, the 8th day of November, 1962.

**EUGENE COOK,**  
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Assistant Attorney General,

**DONALD E. PAYTON,**  
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IN THE  
**SUPREME COURT OF THE UNITED STATES.**

OCTOBER TERM, 1962.

Number 507.

**JAMES P. WESBERRY, JR., and CANDLER CRIM, JR.,**  
Appellants,

vs.

**S. ERNEST VANDIVER, as Governor of the State of Georgia, and  
BEN W. FORTSON, JR., as Secretary of State of  
the State of Georgia,**  
Appellees.

On Appeal from the United States District Court for the  
Northern District of Georgia.

**BRIEF SUPPORTING MOTION TO AFFIRM  
OR DISMISS.**

To the Honorable Chief Justice and Associate Justices of  
the Supreme Court of the United States:

**STATEMENT.**

On April 17, 1962, the Appellants filed their Complaint<sup>1</sup>  
in the District Court for the Northern District of Georgia  
seeking injunctive relief<sup>2</sup> against the enforcement of the  
Georgia Congressional Reapportionment Act of 1931<sup>3</sup> and

<sup>1</sup> Record, pp. 1-16.

<sup>2</sup> Record, p. 3, par. VI, p. 11, par. XXV, p. 13, prayers (g)  
and (h).

<sup>3</sup> Ga. Laws, 1931, p. 46; Ga. Code, Sec. 34-2301.



declaratory judgment<sup>4</sup> invalidating the Act on the grounds that it infringed upon rights of the Appellants guaranteed by the Equal Protection,<sup>5</sup> Due Process,<sup>6</sup> and Privileges and Immunities<sup>7</sup> Clauses of the Fourteenth Amendment, and, further that the Act violated Section 2 of Article I of the Federal Constitution requiring that Representatives be chosen by the people.<sup>8</sup> The Complaint prayed, *inter alia*, that no elections for Representatives be held, except on a state-at-large basis, pending redistricting by the state legislature on an "equitable and representative" basis.<sup>9</sup> By virtue of these allegations, a three-judge court was convened pursuant to 28 U. S. C., Sections 2281 and 2284, to hear and determine the cause.

In argument before the lower court, the Appellants placed chief reliance upon *Baker v. Carr*,<sup>10</sup> whose rationale went no further than to open the doors of the courts for the adjudication of the consistency of state action with the Federal Constitution when no question is involved concerning interference by the federal judiciary with a political branch of government coequal with this Court. On the other hand, the Appellees, in contending no equity in the Complaint, placed chief reliance upon *Colegrove v. Green*,<sup>11</sup> which denied relief to parties seeking congressional redistricting in Illinois under facts more extreme than those presented in this case.

<sup>4</sup> Record, p. 3, par. VI.

<sup>5</sup> Record, p. 9, par. XVIII, p. 12, prayer (d).

<sup>6</sup> Record, p. 10, par. XX, p. 12, prayer (c).

<sup>7</sup> Record, p. 9, par. XVII, p. 12, prayer (e).

<sup>8</sup> Record, p. 9, par. XVII, p. 10, par. XIX, p. 13 (f).

<sup>9</sup> Record, p. 12, par. XXVII, p. 13, prayer (i).

<sup>10</sup> (1962), 369 U. S. 186, 7 L. ed. 2d 663, 82 S. Ct. 691.

<sup>11</sup> (1946), 328 U. S. 549, 90 L. ed. 1432, 66 S. Ct. 1198, reh. den. 329 U. S. 825, 91 L. ed. 701, 67 S. Ct. 118, rearg. den. 329 U. S. 828, 91 L. ed. 703, 67 S. Ct. 199.

On June 20, 1962, the lower court rendered final judgment dismissing the Complaint for want of equity. The court in its opinion summarized the national picture of congressional districting in the following terms:<sup>12</sup>

The problem here is not peculiar to Georgia. For example, Florida has recently substantially changed its congressional districts by reason of the addition of four new congressmen making a total of twelve. The districts there now range in population from a low of 241,250 to a high of 660,345 as compared to the Florida average of 412,530 a variance greatly exceeding the suggested standard.<sup>13</sup> Dade County with a population of 935,047 is divided among two districts, one consisting of a part of Dade County only, and the other consisting of an adjoining county and the balance of Dade County. Duvall, Hillsborough, and Pinellas Counties each constitutes a district under the new plan with populations, respectively of 455,411, 397,788, and 374,665, a sharp example of the variance in population per district if counties are to continue as a basis for districts except where the population of a county is so large as to require division.

There are 435 congressional districts in the United States. Twenty-two congressmen will be elected state-at-large in 1962. Of the remaining 413, the Fifth District of Texas has the largest population, 951,527. The Fifth District of Georgia, here under discussion is next. There are twenty-two districts with popula-

<sup>12</sup> Jurisdictional Statement, p. 27, 2d par., 206 F. Supp. 280, 1. col., 2d par. For a statistical analysis of the national posture of congressional districting, see Defendants' Exhibits Nos. 1, 2, 3, 4 and 8 (adm. R. 65).

<sup>13</sup> "It is the position of plaintiffs that the population of each district should be within a range of ten to fifteen percent of the average district population based on a division of the number of districts into the total population of the state." Jurisdictional Statement, p. 25, last par., 206 F. Supp. 279, 1. col., 2d par.

tions exceeding 600,000. Eighty districts have populations more than fifteen per cent above the state average, while ninety have populations of more than fifteen per cent below the state district average. Using ten per cent as a variance, or tolerance, one hundred eight districts are above and one hundred twenty-five are below the average, a total of two hundred thirty-three or more than one-half of all congressional districts. These figures in no way reflect on the problem of deprivation of rights of the type here asserted through use of the gerrymander, a problem with which we are not concerned here but one that could well be within the rationale of any decision reached.

The lower court recognized that a constitutionally reapportioned state legislature could well provide the relief sought by the Appellants, by stating that:<sup>14</sup>

Our view is buttressed by a due regard for the admonition in *Baker v. Carr* that a "judicially manageable standard" be adopted. This dictates that a reasonable time be afforded for the normal state governmental processes, where there is a substantial chance of relief as we believe there is, to run their course.

The court then moved on to an evaluation of the present vitality of *Colegrove* in the light of *Gomillion v. Lightfoot*<sup>15</sup> and *Baker v. Carr*, and reached the following conclusion:<sup>16</sup>

It would be extraordinary indeed for the court to have departed any more than was absolutely necessary

<sup>14</sup> Jurisdictional Statement, p. 31, 3d par., 206 F. Supp. 282, r. col. (7).

<sup>15</sup> (1960), 364 U. S. 339, 5 L. ed. 2d 110, 81 S. Ct. 125.

<sup>16</sup> Jurisdictional Statement, p. 37, last par., 206 F. Supp. 285, r. col., 2d par.



from the previous standard of withholding judicial relief in matters of the kind involved in *Baker v. Carr*, and a good reason to preserve the *Colegrove* doctrine while at the same time reversing the body of law as it concerned state action alone was that fairly apportioned state legislatures might well alleviate congressional district disparity. But whatever the reason we think *Colegrove* stands and so long as it does it will be our guide.

We do not deem it to be a precedent for dismissal based on the non-justiciability of a political question involving the Congress as here, but we do deem it to be strong authority for dismissal for want of equity when the following factors here involved are considered on balance: a political question involving a coordinate branch of the federal government; a political question posing a delicate problem difficult of solution without depriving others of the right to vote by district, unless we are to redistrict for the state; relief may be forthcoming from a properly apportioned state legislature; and relief may be afforded by the Congress.

## SUMMARY OF ARGUMENT.

### I.

The judgment of the lower court should be affirmed for properly dismissing the complaint for a want of equity.

Affirmance may be rested upon either *Colegrove v. Green*, 328 U. S. 549, the only case directly in point, or upon the abstention doctrine because of the likelihood that state legislative action will afford the relief sought by the Appellants.

A. *The Colegrove Doctrine.* In *Colegrove*, the petitioners challenged the constitutionality of an Illinois statute establishing congressional districts having population disparities far in excess of those present in this case. Justice Frankfurter announced the judgment of the Court in an opinion, concurred in by Justices Reed and Burton, stating that dismissal of the action was required both by *Wood v. Broom*, 287 U. S. 1, holding that there is no federal requirement that congressional districts shall contain as nearly as practicable an equal number of inhabitants, and because the complaint suffered from a want of equity. The opinion emphasized that the relief sought by the petitioners was beyond the competence of this Court to grant, and "that the Constitution has conferred upon Congress exclusive authority to secure fair representation by the States in the popular House and left to that House determination whether States have fulfilled their responsibility," 328 U. S. 554, and that the remedy for any failure in this area lies with the Congress and ultimately with the people.

Justice Rutledge concurred in the judgment because he believed the Court should exercise its discretion to dismiss for a want of equity. Justices Black, Douglas and

Murphy joined in a dissent predicated upon the assumption that there was no likelihood that Illinois would afford relief to the petitioners. As we will see later, such an assumption is unwarranted in this case because of the probability that the reconstituted Georgia legislature will afford the relief sought by the Appellants.

The *Colegrove* doctrine has in effect been reaffirmed by this Court through the citation of *Colegrove* as authority in the following cases which avoided intervention in political matters: *Rafford v. Gary*, 352 U. S. 991; *Kidd v. McCanless*, 352 U. S. 920; *South v. Peters*, 339 U. S. 276; and *MacDougall v. Green*, 335 U. S. 281.

In *Gomillion v. Lightfoot*, 364 U. S. 339, decided on November 14, 1960, this Court invalidated a state statute redefining the boundaries of the City of Tuskegee on the ground of unconstitutional racial discrimination. In its opinion, this Court carefully distinguished between *Colegrove* and *Gomillion* thereby demonstrating clearly the intention to preserve *Colegrove*.

In *Baker v. Carr*, 369 U. S. 186, the apparent inspiration for this litigation and the case most heavily relied upon by the Appellants, this Court went no further than to open the doors of the courts for the adjudication of the consistency of state action with the Federal Constitution when no question is involved concerning interference by the federal judiciary with a political branch of government coequal with this Court. In its opinion, the Court elaborately distinguished between the "political question" cases and those appropriate for adjudication, thereby clearly maintaining the vitality of *Colegrove* within the political sphere. 369 U. S. 210, 226.

The "political question" doctrine is characterized by the interrelationships of the federal courts to the other two branches of the Federal Government, and not the re-



lationship of such courts to the States. The delicate questions involved in these separation of powers contexts were not present in *Baker*, which only involved the federal courts and a state and the well settled criteria developed under the Equal Protection Clause.

In *Wood*, *Colegrove* and *Baker*, this Court has clearly announced its judgment that claims of the nature here presented are not appropriate for adjudication.

B. *The Abstention Doctrine.* The impact of *Baker v. Carr* has created a dramatic transformation in the political life of Georgia.

On April 28, 1962, a three-judge District court held in *Sanders v. Gray*, 203 F. Supp. 158, that Georgia's county-unit method of tabulating the vote cast in party primaries for the nomination of candidates for the Governorship and other statewide offices was unconstitutional by virtue of the severe dilution of the urban vote. Consequently, a candidate was nominated for the office of Governor in a primary where all votes were tabulated equally, and, thereafter, the candidate was elected Governor by the people of Georgia in the General Election held on November 6, 1962. It is a matter of common knowledge in Georgia that the Governor exercises great influence upon the activity of the General Assembly of Georgia.

On May 25, 1962, a three-judge district court held in *Toombs v. Fortson*, 205 F. Supp. 248, that the General Assembly of Georgia, composed of a Senate and House of Representatives, was unconstitutionally constituted in that neither House thereof was apportioned according to population. The court further held that the General Assembly must be reconstituted so that at least one House thereof will have been reapportioned according to population prior to the convening of the General Assembly in January 1963. In accordance with this judgment, the General

Assembly convened in extraordinary session and on October 5, 1962, reapportioned the membership of the Senate entirely on a population basis. The membership of this reconstituted Senate was elected at the General Election held on November 6, 1962. The General Assembly convenes in regular session on the second Monday in January of each year.

It is interesting to note that Appellant Wesberry was elected as a member of the reconstituted Senate and that he campaigned on a promise to seek congressional redistricting. He has not previously been elected to membership in the General Assembly.

The membership of the House of Representatives of the General Assembly is composed of 205 Representatives, 84 of whom represent the 38 most populous counties. While the House is apportioned largely according to geography, it is nevertheless clear that the urban areas possess a powerful voice in the House.

These factors compellingly illustrate the likelihood, recognized by the lower court, that the relief sought by Appellants will be afforded by the reconstituted General Assembly. This likelihood is further intensified by the election of Appellant Wesberry to the State Senate upon a pledge of congressional redistricting. He may reasonably anticipate the cooperation of the Governor, his fellow Senators, and a substantial representation in the House, in securing the congressional redistricting he seeks in this case.

These circumstances call for the application of the abstention doctrine.

The determination which the Appellants would have this Court make lies in an extremely sensitive area involving the relationship of the powers of the National Government to those of the States. Here, of all places,

the federal courts should act cautiously and with great circumspection and should avoid any action where relief may be furnished by the State. This philosophy of comity governing federal-state relations has been applied by this Court in myriads of contexts.

The cases in which the abstention doctrine has been applied reflect a sound and salutary policy derived from our federalism for the purpose of maintaining a balanced and harmonious relationship between federal and state authority. The considerations that prevailed in the abstention cases for avoiding the hazards of serious disruption by federal courts of state government or needless friction between federal and state authority are all the more appropriate in this case where there is a strong likelihood that the issues will be resolved by state legislative action. Under such circumstances, the lower court did not abuse its discretion in dismissing the Complaint.

C. *Conclusion.* The Defendants' Exhibits (1-4, 8; R. 65) and the findings of the lower court clearly illustrate that the form of congressional districting complained of in Georgia is not exotic, but epitomizes a national practice. Furthermore, the figures in these Exhibits do not tell the whole story because they do not show the gerrymander, a common method of districting in many states. This big picture is significant because any direct change by the Court in this area would create a vast national impact. It means that if the claims of the Appellants are legally justified at this time, then the very existence of the present membership of the National House of Representatives is placed in jeopardy.

However, in *Baker v. Carr* this Court has set in motion a great engine designed to give the urban areas of the Nation a far greater influence in their state legislatures, an influence which obviously will result in the reshaping of congressional districts strictly according to population.



Through this reaction the Appellants will achieve their ends. But, here they seek to catapult this Court into an area constitutionally insulated against judicial interference and involving the most sensitive and delegate relationships with the Congress. In recognition of this, the Court has wisely preserved *Colegrove* and is properly leaving congressional redistricting to reapportioned state legislatures.

Georgia has reconstituted its legislature according to federal decree thereby creating the likelihood of congressional redistricting. Furthermore, Appellant Wesberry through his election as a state senator, is in a unique position to effectively achieve within the state legislative framework the relief he here seeks.

In view of these considerations, the judgment of the lower court should be affirmed.

## II.

This appeal should be dismissed on the ground that the matters in controversy have become moot or that no substantial federal question is presented.

A. *Mootness*. The immediate object of the Complaint in this case was to require congressional redistricting prior to the holding of the General Election on November 6, 1962; or, in the alternative, to require the election of Representatives on a state-at-large basis in the General Election. The Election has now been held and the Representatives of the people of Georgia have been elected for the succeeding two years and, therefore, the immediate controversy between the parties has become moot. There are no acts to restrain at the present time and the other relief sought by the Appellants would have no immediate effect because Georgia's congressional representation has been fixed for the 1963-64 term.

Nevertheless, the Appellants attempt to maintain an active controversy by seeking injunctive and declaratory relief aimed at the General Election to be held on November 3, 1964, and subsequent elections. However, the seeking of this additional relief does not rescue the appeal from its newly acquired theoretical status because the appeal now only presents an abstract question divorced from any presently existing right or actual controversy. This mootness is further intensified by the probability that the state legislature will afford the relief sought, and the possibility that the Appellants may be ineligible to vote in subsequent general elections through a change in residence or otherwise. What the Appellants really seek at this time is an advisory opinion which is not susceptible of judicial determination.

B. *No Substantial Federal Question.* In *Remmey v. Smith*, 102 F. Supp. 708, the plaintiffs sought to have a state apportionment act declared unconstitutional and to compel the state legislature to reapportion itself. The three-judge district court held that the suit was premature, on the possibility that the state legislature would afford the relief sought, and dismissed for want of equity.

Upon appeal, this Court entered a *per curiam* opinion stating in part that "The motion to dismiss is granted and the appeal is dismissed for the want of a substantial Federal question." *Remmey v. Smith*, 342 U. S. 916.

The dismissal granted by this Court in *Remmey* is even more appropriate in this case because it involves congressional redistricting in contrast with state legislative reapportionment and, furthermore, because there is a stronger likelihood in this case that the state legislature will afford the relief sought by the Appellants.

## ARGUMENT.

### I.

#### THE JUDGMENT OF THE DISTRICT COURT SHOULD BE AFFIRMED FOR PROPERLY DISMISSING THE COMPLAINT FOR A WANT OF EQUITY.

Affirmance may be rested upon either *Colegrove v. Green*, supra, the only case directly in point, or upon the abstention doctrine because of the likelihood that state legislative action will afford the relief sought by the Appellants.

#### A. THE *Colegrove* DOCTRINE.

In *Wood v. Broom*<sup>17</sup> a voter attacked the 1932 Mississippi Congressional Redistricting Statute as violating Article I, Section 4, and the Fourteenth Amendment, of the Federal Constitution and the 1911 Federal Congressional Reapportionment Act.<sup>18</sup> This Court ruled that no federal requirement, directing that congressional districts be composed of contiguous and compact territory and contain as nearly as practicable an equal number of inhabitants, existed where not embodied in the 1929 Federal Congressional Reapportionment Act, and that the provision to that effect in the preceding 1911 Reapportionment Act had reference solely to the districts in which the Representatives were to be elected under the apportionment made by that Act. This Court reversed and remanded the case to the district court with directions to dismiss the complaint. Justices Brandeis, Stone, Roberts and Cardozo concurred in the result, but were of the opinion that the decree should be reversed and the bill dismissed

<sup>17</sup> (1932), 287 U. S. 1, 77 L. ed. 131, 53 S. Ct. 1.

<sup>18</sup> Id., 287 U. S. 4, last par., 77 L. ed. 133, r. col., 1st par.



for want of equity, without passing upon the question as to the applicability of the 1911 Reapportionment Act.<sup>19</sup>

The evidence is abundant that *Wood* coincided with congressional intent. The Congress has consistently failed to re-enact the districting requirements of the 1911 Federal Congressional Reapportionment Act or similar ones, irrespective of persistent efforts on the part of some members of the Congress to restore such requirements.<sup>20</sup>

In *Colegrove v. Green*,<sup>21</sup> this Court was confronted with an action instituted by Illinois voters residing in congressional districts whose populations ranged from 612,000 to 914,000. Twenty other congressional districts had populations that ranged from 112,116 to 385,207 and in seven of these districts the population was below 200,000.<sup>22</sup> The appellants claimed that since they resided in the heavily populated districts their vote was much less effective than the vote of those residing in a district which under the 1901 State Apportionment Act was also allowed to choose one congressman, though its population was sometimes only one-ninth that of the heavily populated districts.<sup>23</sup> The appellants contended that this reduction of the effectiveness of their vote violated Article I and the Fourteenth Amendment of the Federal Constitution.<sup>24</sup>

<sup>19</sup> *Id.*, 287 U. S. 8, last par., 77 L. ed. 135, r. col., last par.

<sup>20</sup> Notable among these efforts, are those of Representative Emanuel Celler of New York as a member of the House Judiciary Committee.

<sup>21</sup> (1946), 328 U. S. 549, 90 L. ed. 1432, 66 S. Ct. 1198, reh. den. 329 U. S. 825, 91 L. ed. 701, 67 S. Ct. 118, rearg. den. 329 U. S. 828, 91 L. ed. 703, 67 S. Ct. 199.

<sup>22</sup> *Id.*, 328 U. S. 566, last par., 90 L. ed. 1443, l. col., last par.

<sup>23</sup> *Id.*, 328 U. S. 567, last par., 90 L. ed. 1444, l. col. We should note here, that in Georgia the most extreme ratio is approximately three to one. Jurisdictional Statement, p. 25, 1st par., 206 F. Supp. 279, l. col., 4th par.

<sup>24</sup> *Id.*, 328 U. S. 567, last par., 90 L. ed. 1443, r. col., last par.

Justice Frankfurter announced the judgment of the Court in an opinion concurred in by Justices Reed and Burton wherein they opined that dismissal of the complaint was required both by *Wood v. Broom*, supra, holding that there is no federal requirement that congressional districts shall contain as nearly as practicable an equal number of inhabitants and because the complaint suffered from a want of equity.<sup>25</sup>

In commenting on *Wood v. Broom*, Justice Frankfurter stated that:<sup>26</sup>

Nothing has now been adduced to lead us to overrule what this Court found to be the requirements under the Act of 1929, the more so since seven Congressional elections have been held under the Act of 1929 as construed by this Court. No manifestation has been shown by Congress even to question the correctness of that which seemed compelling to this Court in enforcing the will of Congress in *Wood v. Broom*.

But we also agree with the four Justices (Brandeis, Stone, Roberts, and Cardozo, JJ.) who were of opinion that the bill in *Wood v. Broom*, supra, should be "dismissed for want of equity."

Justice Frankfurter further stated that:<sup>27</sup>

We are of opinion that the petitioners ask of this Court what is beyond its competence to grant. This is one of those demands on judicial power which cannot be met by verbal fencing about "jurisdiction." It must be resolved by considerations on the basis of which this Court, from time to time, has refused to intervene in controversies. It has refused to do so because due regard for the effective working of our

<sup>25</sup> Id., 328 U. S. 551, 2d par., 90 L. ed. 1433, 1 col., last par.

<sup>26</sup> Id.

<sup>27</sup> Id., 328 U. S. 552, 2d par., 90 L. ed. 1433, 1 col., last par.

government revealed this issue to be of a peculiarly political nature and therefore not meet for judicial determination.

Of<sup>28</sup> course no court can affirmatively re-map the Illinois districts so as to bring them more in conformity with the standards of fairness for a representative system. At best we could only declare the existing electoral system invalid. The result would be to leave Illinois undistricted and to bring into operation, if the Illinois legislature chose not to act, the choice of members for the House of Representatives on a state-wide ticket. The last stage may be worse than the first. The upshot of judicial action may defeat the vital political principle which led Congress, more than a hundred years ago, to require districting. This requirement, in the language of Chancellor Kent, "was recommended by the wisdom and justice of giving, as far as possible, to the local subdivisions of the people of each state, a due influence in the choice of representatives, so as not to leave the aggregate minority of the people in a state, though approaching perhaps to a majority, to be wholly over-powered by the combined action of the numerical majority, without any voice whatever in the national councils." 1 Kent, Commentaries, 12th ed., 1873, 230-231, note (c). Assuming acquiescence on the part of the authorities of Illinois in the selection of its Representatives by a mode that defies the direction of Congress for selection by districts, the House of Representatives may not acquiesce. In the exercise of its power to judge the qualifications of its own members, the House may reject a delegation of Representatives-at-large.

The<sup>29</sup> petitioners urge with great zeal that the conditions of which they complain are grave evils and

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<sup>28</sup> Id., 328 U. S. 553, 1st par., 90 L. ed. 1434, 1. col., last par.

<sup>29</sup> Id., 328 U. S. 554, 2d par., 90 L. ed. 1434, r. col., last par.



offend public morality. The Constitution of the United States gives ample power to provide against these evils. But due regard for the Constitution as a viable system precludes judicial correction. Authority for dealing with such problems resides elsewhere. Article 1, § 4 of the Constitution provides that "The Times, Places and Manner of holding Elections for . . . Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, . . ." The short of it is that the Constitution has conferred upon Congress exclusive authority to secure fair representation by the States in the popular House and left to that House determination whether States have fulfilled their responsibility. If Congress failed in exercising its powers, whereby standards of fairness are offended, the remedy ultimately lies with the people. Whether Congress faithfully discharges its duty or not, the subject has been committed to the exclusive control of Congress. An aspect of government from which the judiciary, in view of what is involved, has been excluded by the clear intention of the Constitution cannot be entered by the federal courts because Congress may have been in default in exacting from States obedience to its mandate.

The one stark fact that emerges from a study of the history of Congressional apportionment is its embroilment in politics, in the sense of party contests and party interests. The Constitution enjoins upon Congress the duty of apportioning Representatives "among the several States . . . according to their respective Numbers, . . ." Article 1, § 2. Yet, Congress has at times been heedless of this command and not apportioned according to the requirements of the Census. It never occurred to anyone that this Court could issue mandamus to compel Congress to perform its manda-

tory duty to apportion. "What might not be done directly by mandamus, could not be attained indirectly by injunction." . . . Throughout our history, whatever may have been the controlling Apportionment Act, the most glaring disparities have prevailed as to the contours and the population of districts. . . .

To<sup>30</sup> sustain this action would cut very deep into the very being of Congress. Courts ought not to enter this political thicket. The remedy for unfairness in districting is to secure State legislatures that will apportion properly, or to invoke the ample powers of Congress. The Constitution has many commands that are not enforceable by courts because they clearly fall outside the conditions and purposes that circumscribe judicial action. . . . The Constitution has left the performance of many duties in our governmental scheme to depend on the fidelity of the executive and legislative action and, ultimately, on the vigilance of the people in exercising their political rights.

Justice Rutledge concurred in the judgment because he believed the Court should exercise its discretion to dismiss for want of equity, on several grounds: that to grant relief would involve the Court in delicate relations with the Congress and the States; that the date (June 10, 1946) was so late as to make redistricting unlikely before the election; and that the election of Representatives on a state-at-large basis would be undesirable.<sup>31</sup>

Justice Black, dissenting in an opinion joined by Justices Douglas and Murphy, opined that the district court had jurisdiction, that a justiciable question was presented, that the appellants had standing to sue,<sup>32</sup> that the popu-

<sup>30</sup> Id., 328 U. S. 556, 2d par., 90 L. ed. 1436, 1. col., 2d par.

<sup>31</sup> Id., 328 U. S. 565, 4th par., 90 L. ed. 1442, r. col., 4th par.

<sup>32</sup> Id., 328 U. S. 568, 90 L. ed. 1444, 1. col.

lation disparities among the districts violated Article I and the Equal Protection Clause,<sup>33</sup> and that, hence, relief should be afforded. The dissent was clearly predicated upon the assumption that there was no likelihood that Illinois would afford relief to the appellants because the state legislature was apportioned in such a manner that the state legislators had an interest in perpetuating the complained of congressional districting and, furthermore, because a series of suits previously instituted in the state courts challenging the validity of such districting had proved ineffective.<sup>34</sup> Such an assumption is unwarranted in this case because of the probability that the reconstituted Georgia legislature will afford the relief sought by the Appellants. This aspect is treated later in this division of the Brief.

As did their counterparts in *Colegrove*, the Appellants in this case seek the election of Representatives on a state-at-large basis pending redistricting by the state legislature according to population. Obviously, statewide electioneering would be calculated to appeal to the compact majority residing in the easily accessible urban areas and, hence, would result in the neglect of the substantial minority residing in the rural areas. Even the advocates of federal requirements for congressional districting disapprove the election of Representatives on a state-at-large basis. For instance, Representative Celler in a hearing before his House Committee on the Judiciary stated that:<sup>35</sup>

I have eliminated the idea of drawing district lines here in Washington as impracticable. In view of the

<sup>33</sup> Id., 328 U. S. 570, 90 L. ed. 1445, 1 col., 2d par.

<sup>34</sup> Id., 328 U. S. 567, 1st par., 90 L. ed. 1443, r. col., 1st par.

<sup>35</sup> Hearing on June 24, 1959, before Subcommittee No. 2 of the Committee on the Judiciary, House of Representatives, 86th Congress, 1st session, on House Resolutions 73, 575, 8266 and 8473.



requirement of compactness, such elements as economic and social interests of an area, its topography and geography, means of transportation, the desires of the inhabitants as well as of their elected representatives, and finally the political factors should all be considered. Thus I believe State legislature to be far better equipped to determine and evaluate those factors than either the Congress or any national agency it might designate to do so. I look with disfavor upon compelling Representatives to run at large as a means of enforcement; in fact, one of the very purposes behind my bill is to eliminate once and for all Congressmen at large.

The *Colegrove* doctrine has in effect been reaffirmed by this Court through the citation of *Colegrove* as authority in the following cases which avoided intervention in political matters: *Radford v. Gary* (1957), 352 U. S. 991, 1 L. ed. 2d 540, 77 S. Ct. 559; *Kidd v. McCaless* (1956), 352 U. S. 920, 1 L. ed. 2d 157, 77 S. Ct. 223; *South v. Peters* (1950), 339 U. S. 276, 94 L. ed. 834, 70 S. Ct. 461; and *MacDougall v. Green* (1948), 335 U. S. 281, 93 L. ed. 3, 69 S. Ct. 1.

In *Gomillion v. Lightfoot*,<sup>36</sup> decided on November 14, 1960, the plaintiffs, Negroes, attacked the constitutionality of a state statute redefining the boundaries of the City of Tuskegee. The plaintiffs contended that enforcement of the statute, which altered the shape of the city from a square to a twenty-eight-sided figure and removed from the city all save a few Negro voters but no white voters, constituted a discrimination against them in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment and denied them the right to vote in defiance of the Fifteenth Amendment. This Court,

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<sup>36</sup> (1960), 364 U. S. 339, 5 L. ed. 2d 110, 81 S. Ct. 125.

speaking through Justice Frankfurter, held that assuming the truth of plaintiffs' allegations, the statute was invalid because violating the Fifteenth Amendment, which forbids a state from passing any law depriving a citizen of his vote because of his race.

The Court in distinguishing *Colegrove* stated that:<sup>37</sup>

The respondents find another barrier to the trial of this case in *Colegrove v. Green*, 328 U. S. 549, 90 L. ed. 1432, 66 S. Ct. 1198. In that case the Court passed on an Illinois law governing the arrangement of congressional districts within that State. The complaint rested upon the disparity of population between the different districts which rendered the effectiveness of each individual's vote in some districts far less than in others. This disparity came to pass solely through shifts in population between 1901, when Illinois organized its congressional districts, and 1946, when the complaint was lodged. During this entire period elections were held under the districting scheme devised in 1901. The Court affirmed the dismissal of the complaint on the ground that it presented a subject not meet for adjudication. The decisive facts in this case, which at this stage must be taken as proved, are wholly different from the considerations found controlling in *Colegrove*.

That case involved a complaint of discriminatory apportionment of congressional districts. The appellants in *Colegrove* complained only of a dilution of the strength of their votes as a result of legislative inaction over a course of many years. The petitioners here complain that affirmative legislative action deprives them of their votes and the consequent advantages that the ballot affords. When a legislature

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<sup>37</sup> Id., 364 U. S. 346, 1st par., 5 L. ed. 2d 116, 1. col., 2d par.

thus singles out a readily isolated segment of a racial minority for special discriminatory treatment, it violates the Fifteenth Amendment. In no case involving unequal weight in voting distribution that has come before the Court did the decision sanction a differentiation on racial lines whereby approval was given to unequivocal withdrawal of the vote solely from colored citizens. Apart from all else, these considerations lift this controversy out of the so-called "political" arena and into the conventional sphere of constitutional litigation.

While in form this is merely an act redefining metes and bounds, if the allegations are established, the inescapable human effect of this essay in geometry and geography is to despoil colored citizens, and only colored citizens, of their theretofore enjoyed voting rights. That was not *Colegrove v. Green*.

Implicit within this careful distinction between *Colegrove* and *Gomillion* is the obvious desire to preserve *Colegrove*.

We now turn our attention to *Baker v. Carr*,<sup>38</sup> the apparent inspiration for this litigation and the case most heavily relied upon by the Appellants. The complaint in *Baker* alleged that because of population shifts and the failure of the Tennessee legislature to reapportion<sup>2</sup> as required by the State Constitution, the 1901 State Apportionment Act had become obsolete, and denied the plaintiffs equal protection of the laws as guaranteed by the Fourteenth Amendment. In an opinion by Justice Brennan, expressing the views of six members of this Court, it was held that the district court possessed jurisdiction of the subject matter; that a justiciable cause of action was stated upon which the plaintiffs would be entitled to

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<sup>38</sup> (1962). 369 U. S. 186, 7 L. ed. 2d 663, 82 S. Ct. 691.



appropriate relief; and that the plaintiffs had standing to challenge the 1901 State Apportionment Act.<sup>39</sup>

This Court in *Baker* elaborately distinguished between the "political question" cases and those appropriate for adjudication, thereby clearly maintaining the vitality of *Colegrove* within the political sphere. The majority opinion defined the contours of the "political question" cases in the following unmistakable terms.<sup>40</sup>

Our discussion, even at the price of extending this opinion, requires review of a number of political question cases, in order to expose the attributes of the doctrine—attributes which, in various settings, diverge, combine, appear, and disappear in seeming disorderliness. Since that review is undertaken solely to demonstrate that neither singly nor collectively do these cases support a conclusion that this apportionment case is nonjusticiable, we of course do not explore their implications in other contexts. That review reveals that in the Guaranty Clause cases and in the other "political question" cases, *it is the relationship between the judiciary and the coordinate branches of the Federal Government, and not the federal judiciary's relationship to the States, which gives rise to the "political question."*

We have said that "in determining whether a question falls within (the political question) category, the appropriateness under our system of government of attributing finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination are dominant considerations." *Coleman v. Miller*, 307 U. S. 433, 454-455, 83 L. ed. 1385, 1396, 1397, 59 S. Ct. 972, 122 A. L. R. 695.

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<sup>39</sup> *Id.*, 369 U. S. 197, last par.

<sup>40</sup> *Id.*, 369 U. S. 210, 2d par., 7 L. ed. 2d 681, r. col., 2d par.

The nonjusticiability of a political question is primarily a function of the separation of powers. Much confusion results from the capacity of the "political question" label to obscure the need for case-by-case inquiry. *Deciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise, in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution.* . . .

We<sup>41</sup> come, finally, to the ultimate inquiry whether our precedents as to what constitutes a nonjusticiable "political question" bring the case before us under the umbrella of that doctrine. A natural beginning is to note whether any of the common characteristics which we have been able to identify and label descriptively are present. We find none: The question here is the consistency of state action with the Federal Constitution. We have no question decided, or to be decided, by a political branch of government co-equal with this Court. Nor do we risk embarrassment of our government abroad, or grave disturbance at home if we take issue with Tennessee as to the constitutionality of her action here challenged. Nor need the appellants, in order to succeed in this action, ask the Court to enter upon policy determinations for which judicially manageable standards are lacking. (Emphasis supplied.)

These attributes are synonymous with those present in *Colegrove* and in this case. The "political question" doctrine is characterized by the interrelationships of the federal courts to the other two branches of the Federal Government, and not the relationship of such courts to the

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<sup>41</sup> Id., 369 U. S. 226, 2d par., 7 L. ed. 2d 691, 1. col., 2d par.

States: The delicate questions involved in these separation of powers contexts were not present in *Baker*, which only involved the federal courts and a state and the well settled criteria developed under the Equal Protection Clause.

The Constitution has clearly conferred upon Congress the exclusive authority and responsibility to secure fair representation by the States in the popular House and left to that House the determination of whether states have fulfilled their responsibility. If a state selects its Representatives by a mode that defies the direction of Congress for selection by districts, the House, in the exercise of its power to judge the qualifications of its own members, may reject the delegation of Representatives.

In *Wood*, *Colegrove* and *Baker*, this Court has clearly announced its judgment that claims of the nature here presented are not appropriate for adjudication.

#### B. THE ABSTENTION DOCTRINE.

##### 1. Georgia's New Political Climate.

The impact of *Baker v. Carr* has created a dramatic transformation in the political life of Georgia.

On April 28, 1962, a three-judge district court<sup>42</sup> held in *Sanders v. Gray*<sup>43</sup> that Georgia's county-unit method of tabulating the vote cast in party primaries for the nomination of candidates for the Governorship and other statewide offices was unconstitutional by virtue of the severe dilution of the urban vote. Consequently, on September 12, 1962, a Democratic candidate was nominated for the office of Governor in a primary where all votes were tabu-

<sup>42</sup> Composed of Circuit Judges Tuttle and Bell and District Judge Hooper.

<sup>43</sup> (D. C. N. D.-1962), 203 F. Supp. 158.



lated equally. This candidate was elected Governor by the people of Georgia, in the General Election held on November 6, 1962. It is a matter of common knowledge in Georgia that the Governor exercises great influence upon the activity of the General Assembly of Georgia.

On May 25, 1962, a three-judge district court<sup>44</sup> held in *Toombs v. Fortson*<sup>45</sup> that the General Assembly of Georgia, composed of a Senate and House of Representatives, was unconstitutionally constituted in that neither House thereof was apportioned according to population. The court further held that the General Assembly must be reconstituted so that at least one House thereof will have been reapportioned according to population prior to the convening of the General Assembly in January, 1963.<sup>46</sup> The court concluded by stating that:<sup>47</sup>

Giving full consideration to all of these factors,<sup>48</sup> and recognizing the right of the plaintiffs to have their constitutional rights vindicated at the earliest practicable moment, while at the same time according every presumption of good faith to, and affording a reasonable opportunity to act to, the responsible State officials and the present General Assembly now that

<sup>44</sup> Composed of Circuit Judges Tuttle and Bell and District Judge Morgan, the same three judges composing the lower court in this case.

<sup>45</sup> (D. C. N. D.-1962), 205 F. Supp. 248.

<sup>46</sup> The General Assembly convenes in regular session on the second Monday in January of each year. Par. III, Sec. IV, Art. III, Ga. Const.; Ga. Code Ann., Sec. 2-1603.

<sup>47</sup> 205 F. Supp. 258, r. col., last par.

<sup>48</sup> See 205 F. Supp. 258, l. col., (7). These factors converged in the determination that it would be feasible for the General Assembly to convene in extraordinary session, after the conclusion of the state primaries in September, 1962 but prior to the holding of the General Election on November 6, 1962, for the purpose of reapportioning itself to conform to the criteria prescribed by the court.

the rights of the parties have been declared, we have concluded that we should enter no injunction at this time. We have concluded that we should postpone any further proceedings in this matter until the State has had a reasonable opportunity to reconstitute the Legislature so as to meet the constitutional standards here laid down prior to the January, 1963, session. If it appears that the Legislature has taken such action as brings the composition of the General Assembly within such constitutional standards, then this Court need take no further action. If, on the other hand, the Legislature does not act, or if its action does not meet constitutional standards, then we will be under a clear duty to take such action as is necessary and feasible to accord plaintiffs their rights.

On September 14, 1962, the Governor of Georgia issued his Proclamation<sup>49</sup> convening the General Assembly in extraordinary session on September 27, 1962, for the purpose *inter alia*, of considering and enacting laws relating to the reapportionment of the Senate within the requirements of *Toombs v. Fortson*. This convening of the extraordinary session immediately followed the conclusion of the state primary process in September for the nomination of party candidates for the public offices filled in the General Election held on November 6, 1962.

Upon convening, the General Assembly expeditiously went about the business of considering the reconstitution of the Senate, which culminated on October 5, 1962, in the enactment into law of Act No. 150 appportioning the membership of the Senate entirely on a population basis as required by *Toombs v. Fortson*. Thereafter, special sena-

<sup>49</sup> Ga. Laws, Sept.-Oct. 1962, Extra Sess., pp. 3-5. A copy of the Proclamation is set forth in Appendix A, *infra*, pp. 47-48.

<sup>50</sup> Ga. Laws, Sept.-Oct. 1962, Extra Sess., pp. 7-31. A copy of the Act is set forth in Appendix B, *infra*, pp. 49-75.

torial primaries were held for the nomination of party candidates for membership in the reconstituted Senate, and at the General Election held on November 6, 1962, senators were elected by the people to represent the newly defined senatorial districts.

It is interesting to note that Appellant Wesberry was elected as the Senator to represent the 37th Senatorial District, and that it is a matter of common knowledge that during his campaign he promised that "if elected he will promptly introduce a bill to reapportion the 5th Congressional District in a way that will give Fulton County its own congressional seat."<sup>51</sup> He has not previously been elected to membership in the General Assembly.

The membership of the House of Representatives of the General Assembly is apportioned, after each federal census, among Georgia's 159 counties as follows: "To the eight counties having the largest population, three representatives each; to the thirty counties having the next largest population, two representatives each; and to the remaining counties, one representative each."<sup>52</sup> Consequently, the House is composed of 205 Representatives, 84 of whom represent the 38 most populous counties. While the House is apportioned largely according to geography, it is nevertheless clear that the urban areas possess a powerful voice in the House.

These factors compellingly illustrate the likelihood, recognized by the lower court,<sup>53</sup> that the relief sought by

<sup>51</sup> *The Atlanta Journal*, Thursday, Oct. 11, 1962, p. 17, 3d col., 2d par.

<sup>52</sup> Sec. III, Art. III, Ga. Const.; Ga. Code Ann., Ch. 2-15. The membership of the House of Representatives elected for the 1963-64 term and to be elected for subsequent terms has been reapportioned on the basis of the 1960 federal census. Ga. Laws, 1961, p. 111; Ga. Code, Sec. 47-101.

<sup>53</sup> Jurisdictional Statement, p. 31, 3d par., 206 F. Supp. 282, r. col. (7).



Appellants will be afforded by the reconstituted General Assembly. This likelihood is further intensified by the election of Appellant Wesberry to the State Senate upon a pledge of congressional redistricting. He may reasonably anticipate the cooperation of the Governor, his fellow Senators, and a substantial representation in the House, in securing the congressional redistricting he seeks in this case.

## 2. Federal-State Relations.

The determination which the Appellants would have this Court make lies in an extremely sensitive area involving the relationship of the powers of the National Government to those of the States. Here, of all places, the federal courts should act cautiously and with great circumspection and should avoid any action where relief may be furnished by the State. This philosophy of comity governing federal-state relations has been applied by this Court in myriads of contexts.

In *Great Lakes Dredge & Dock Company v. Huffman*,<sup>54</sup> the petitioners instituted in federal court a declaratory judgment action seeking to have a state law as applied to them and their employees declared unconstitutional. The action was dismissed and on appeal to this Court the judgment was affirmed in a unanimous opinion stating in part that:<sup>55</sup>

This Court has recognized that the federal courts, in the exercise of the sound discretion which has traditionally guided courts of equity in granting or withholding the extraordinary relief which they may afford, will not ordinarily restrain state officers from

<sup>54</sup> (1943), 319 U. S. 293, 87 L. ed. 1407, 63 S. Ct. 1070.

<sup>55</sup> Id., 319 U. S. 297, last par., 87 L. ed. 1410, r. col., last par.

collecting state taxes where state law affords an adequate remedy to the taxpayer. *Matthews v. Rodgers*, 284 U. S. 521, 76 L. ed. 447, 52 S. Ct. 217. This withholding of extraordinary relief by courts having authority to give it is not a denial of the jurisdiction which Congress has conferred on the federal courts, or of the settled rule that the measure of inadequacy of the plaintiff's legal remedy is the legal remedy afforded by the federal not the state courts. *Stratton v. St. Louis Southwestern R. Co.*, 284 U. S. 530, 533, 534, 76 L. ed. 465, 468, 469, 52 S. Ct. 222; *Di Giovanni v. Camden F. Ins. Asso.*, 296 U. S. 64, 69, 80 L. ed. 47, 51, 56 S. Ct. 1. On the contrary, it is but a recognition that the jurisdiction conferred on the federal courts embraces suits in equity as well as at law, and that a federal court of equity, which may in an appropriate case refuse to give its special protection to private rights when the exercise of its jurisdiction would be prejudicial to the public interest (*United States ex rel. Greathouse v. Derr*, 289 U. S. 352, 359, 360, 77 L. ed. 1250, 1254, 1255, 53 S. Ct. 614; *Virginian R. Co. v. System Federation, R. E. D.*, 300 U. S. 515, 549-553, 81 L. ed. 789, 800, 802, 57 S. Ct. 592), should stay its hand in the public interest when it reasonably appears that private interests will not suffer. See *Pennsylvania v. Williams*, 294 U. S. 176, 185, 79 L. ed. 841, 847, 55 S. Ct. 380, 96 A. L. R. 1166, and cases cited.

It is in the public interest that federal courts of equity should exercise their discretionary power to grant or withhold relief so as to avoid needless obstruction of the domestic policy of the states.

“The scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts, and a proper reluctance to interfere by injunction with their fiscal operations, re-

quire that such relief should be denied in every case where the asserted federal right may be preserved without it. Whenever the question has been presented, this Court has uniformly held that the mere illegality or unconstitutionality of a state or municipal tax is not in itself a ground for equitable relief in the courts of the United States. If the remedy at law is plain, adequate, and complete, the aggrieved party is left to that remedy in the state courts, from which the cause may be brought to this Court for review if any federal question be involved." *Matthews v. Rodgers*, supra (284 U. S. 525, 526, 76 L. ed. 451, 452, 52 S. Ct. 217).

The<sup>56</sup> statutory authority to render declaratory judgments permits federal courts by a new form of procedure to exercise the jurisdiction to decide cases or controversies, both at law and in equity, which the Judiciary Acts had already conferred. *Aetna L. Ins. Co. v. Haworth*, 200 U. S. 227, 81 L. ed. 617, 57 S. Ct. 461, 108 A. L. R. 1000. Thus the Federal Declaratory Judgments Act (Act of June 14, 1934, 48 Stat. 955, c. 512, as amended, 28 U. S. C. A. § 400, 8 F. C. A., title 28, § 400), provides in § 1, that a declaration of rights may be awarded although no further relief be asked, and in § 2 that "further relief based on a declaratory judgment or decree may be granted whenever necessary or proper."

The jurisdiction of the district court in the present suit, praying an adjudication of rights in anticipation of their threatened infringement, is analogous to the equity jurisdiction in suits quia timet or for a decree

<sup>56</sup> Id., 319 U. S. 209, last par., 87 L. ed. 1412, 1. col., 2d par. As to this aspect of the opinion, see also: *Public Affairs Press v. Rickover* (1962), 369 U. S. 111, 112, 2d par., 7 L. ed. 2d 606, 82 S. Ct. 582; and *Eccles v. Peoples Bank* (1948), 333 U. S. 426, 431, 2d par., 92 L. ed. 784, 789, 1. col., 2d par., 68 S. Ct. 641, reh. den. (1948), 333 U. S. 877, 92 L. ed. 1153, 68 S. Ct. 900.



quieting title. See *Nashville, C. & St. L. R. Co. v. Wallace*, 288 U. S. 249, 263; 77 L. ed. 730, 735, 53 S. Ct. 345, 87 A. L. R. 1191. Called upon to adjudicate what is essentially an equitable cause of action, the district court was as free as in any other suit in equity to grant or withhold the relief prayed, upon equitable grounds. The Declaratory Judgments Act was not devised to deprive courts of their equity powers or of their freedom to withhold relief upon established equitable principles. It only provided a new form of procedure for the adjudication of rights in conformity to those principles. The Senate committee report on the bill pointed out that this Court could, in the exercise of its equity power, make rules governing the declaratory judgment procedure. S. Rep. No. 1005, 73rd Cong., 2d Sess., p. 6. And the House report declared that "large discretion is conferred upon the courts as to whether or not they will administer justice by this procedure." H. R. Rep. No. 1264, 73rd Cong., 2d Sess., p. 2; and see *Brillhart v. Excess Ins. Co.*, 316 U. S. 491, 494, 86 L. ed. 1620, 1624, 62 S. Ct. 1173; *Borchard, Declaratory Judgments*, 2d ed., p. 312.

*Martin v. Creasy*<sup>57</sup> involved an action instituted in federal court, by owners of property abutting a section of highway which, under authority of a Pennsylvania statute, was to be designated as a "limited access highway," to which owners of abutting property had no right of ingress or egress except as may be provided by the authorities responsible for the highway. Claiming that the enforcement of the statute would deprive them of their property without due process of law, since the statute did not provide compensation for loss of access to the highway, the plaintiffs asked for injunctive relief and for a judgment declaring the statute unconstitutional. In equita-

<sup>57</sup> (1959), 360 U. S. 219, 3 L. ed. 2d 1186, 79 S. Ct. 1034.

ble proceedings in the state courts it was found that the state statute provided a complete procedure to guard and protect the plaintiffs' constitutional rights at all times. Nevertheless, the district court granted the plaintiffs relief, believing that they might be irreparably harmed during the period required to determine their rights in the state courts.

On appeal, this Court reversed holding in part that:<sup>58</sup>

The circumstances which should impel a federal court to abstain from blocking the exercise by state officials of their appropriate functions are present here in a marked degree. The considerations which support the wisdom of such abstention have been so thoroughly and repeatedly discussed by this Court as to require little elaboration. *Railroad Com. v. Pullman Co.*, 312 U. S. 496, 85 L. ed. 971, 61 S. Ct. 643; *Chicago v. Fieldcrest Dairies*, 316 U. S. 168, 86 L. ed. 1355; 62 S. Ct. 986; *Spector Motor Service, Inc. v. McLaughlin*, 323 U. S. 101, 89 L. ed. 101, 65 S. Ct. 152; *A. F. of L. v. Watson*, 327 U. S. 582, 90 L. ed. 873, 66 S. Ct. 761; *Government Employees v. Windsor*, 353 U. S. 364, 1 L. ed. 2d 894, 77 S. Ct. 838. See also: *Alabama Public Service Com. v. Southern R. Co.*, 341 U. S. 341, 95 L. ed. 1002, 71 S. Ct. 762. Reflected among the concerns which have traditionally counseled a federal court to stay its hand are the desirability of avoiding unseemly conflict between two sovereignties, the unnecessary impairment of state functions, and the premature determination of constitutional questions. All those factors are present here.

For other cases applying the doctrine of equitable abstention, see: *Harrison v. NAACP* (1959), 360 U. S. 167, 176, 2d par., 3 L. ed. 2d 1152, 1158, 1. col. 2d par., 79 S. Ct.

<sup>58</sup> Id., 360 U. S. 224, 2d par., 3 L. ed. 2d 1189, r. col., last par.

1025; *Louisiana Power & Light Co. v. City of Thibodaux* (1959), 360 U. S. 25, 27, 1st par., 3 L. ed. 2d 1058, 1061, 1. col., last par., 79 S. Ct. 1070, reh. den. (1959), 360 U. S. 940, 3 L. ed. 2d 1552, 79 S. Ct. 1442; *City of Meridian v. Southern Bell Tel. & Tel. Co.* (1959), 358 U. S. 639, 640, last par., 3 L. ed. 2d 562, 563, r. col., 2d par., 79 S. Ct. 455; *Albertson v. Millard* (1953), 345 U. S. 242, 245, 2d par., 97 L. ed. 983, 985, r. col., 3d par., 73 S. Ct. 600; *Burford v. Sun Oil Co.* (1943), 319 U. S. 315, 317, last par., 87 L. ed. 1424, 1426, 1. col., 2d par., 63 S. Ct. 1098, reh. den. (1943), 320 U. S. 214, 87 L. ed. 1851, 63 S. Ct. 1442; *Beal v. Missouri Pacific Railroad Corp.* (1941), 312 U. S. 45, 50, 1st par., 85 L. ed. 577, 580, 1. col., 1st par., 61 S. Ct. 418; and *Giovanni v. Camden Fire Insurance Assn.* (1935), 296 U. S. 64, 73, last par., 80 L. ed. 47, 53, r. col., last par., 56 S. Ct. 1. See also Justice Clark's concurring opinion in *Baker v. Carr*, 369 U. S. 258, last par.

These cases reflect a sound and salutary policy derived from our federalism for the purpose of maintaining a balanced and harmonious relationship between federal and state authority. The considerations that prevailed in these cases for avoiding the hazards of serious disruption by federal courts of state government or needless friction between federal and state authority are all the more appropriate in this case where there is a strong likelihood that the issues will be resolved by state legislative action. Under such circumstances, the lower court did not abuse its discretion in dismissing the Complaint.<sup>59</sup>

<sup>59</sup> *Martin v. Creasy* (1959), 360 U. S. 219, 225, 3 L. ed. 2d 1186, 1190, r. col., 79 S. Ct. 1034; *Alabama Pub. Ser. Com. v. Southern Railway Co.* (1951), 341 U. S. 341, 95 L. ed. 1002, 71 S. Ct. 762, "The motions of the appellee that the mandates of these cases provide for retention by the District Court of jurisdiction pending further proceedings are denied" (1951), 341 U. S. 946, 95 L. ed. 1370, 71 S. Ct. 1011; *Burford v. Sun Oil Co.* (1943), 319 U. S. 315, 334, 2d par., 87 L. ed. 1424, 1435, 1. col., 2d par., 63 S. Ct. 1098, reh. den. (1943), 320 U. S. 214, 87 L. ed. 1851, 63 S. Ct. 1442; *Hastings v. Shelby Oil & Gas Co.* (1943), 319 U. S. 348.



### C. CONCLUSION.

The Defendants' Exhibits<sup>60</sup> and the findings of the lower court<sup>61</sup> clearly illustrate that the form of congressional districting complained of in Georgia is not exotic, but epitomizes a national practice. Furthermore, the figures in these Exhibits do not tell the whole story because they do not show the gerrymander, a common method of districting in many states. This big picture is significant because any direct change by the Court in this area would create a vast national impact. It means that if the claims of the Appellants are legally justified at this time, then the very existence of the present membership of the National House of Representatives is placed in jeopardy.

However, in *Baker v. Carr* this Court has set in motion a great engine designed to give the urban areas of the Nation a far greater influence in their state legislatures; an influence which obviously will result in the reshaping of congressional districts strictly according to population. Through this reaction the Appellants will achieve their ends. But, here they seek to catapult this Court into an area constitutionally insulated against judicial interference and involving the most sensitive and delegate relationships with the Congress. In recognition of this, the Court has wisely preserved *Colgrove* and is properly leaving congressional redistricting to reapportioned state legislatures.

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87 L. ed. 1443. 63 S. Ct. 1114, reh. den. (1943), 320 U. S. 214, 87 L. ed. 1851. 63 S. Ct. 1442; *Great Lakes Dredge & Dock Co. v. Huffman* (1943), 319 U. S. 293, 301, last par., 87 L. ed. 1407, 1413, 1. col., 2d par., 63 S. Ct. 1070; and *Beal v. Missouri Pacific Railroad Corp.* (1941), 312 U. S. 45, 51, 3d par., 85 L. ed. 577, 580, 1. col., 3d par., 61 S. Ct. 418.

<sup>60</sup> Defendants' Exhibits Nos. 1, 2, 3, 4 and 8 (adm. R. 65).

<sup>61</sup> Jurisdictional Statement, p. 27, 2d par., 206 F. Supp. 280, 1. col., 2d par.

Georgia has reconstituted its legislature according to federal decree thereby creating the likelihood of congressional redistricting. Furthermore, Appellant Wesberry through his election as a state senator, is in a unique position to effectively achieve within the state legislative framework the relief he here seeks.

In view of these considerations, the judgment of the lower court should be affirmed.

## II.

THIS APPEAL SHOULD BE DISMISSED ON THE GROUND THAT THE MATTERS IN CONTROVERSY HAVE BECOME MOOT OR THAT NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED.

### A. MOOTNESS.

The immediate object of the Complaint in this case was to require congressional redistricting prior to the holding of the General Election on November 6, 1962, or, in the alternative, to require the election of Representatives on a state-at-large basis in the General Election. The Election has now been held and the Representatives of the people of Georgia have been elected for the succeeding two years and, therefore, the immediate controversy between the parties has become moot. There are no acts to restrain at the present time and the other relief sought by the Appellants would have no immediate effect because Georgia's congressional representation has been fixed for the 1963-64 term.

Nevertheless, the Appellants attempt to maintain an active controversy by seeking injunctive and declaratory relief aimed at the General Election to be held on No-

vember 3, 1964, and subsequent elections. However, the seeking of this additional relief does not rescue the appeal from its newly acquired theoretical status because the appeal now only presents an abstract question divorced from any presently existing right or actual controversy. This mootness is further intensified by the probability that the state legislature will afford the relief sought, and the possibility that the Appellants may be ineligible to vote in subsequent general elections through a change in residence or otherwise.<sup>62</sup> What the Appellants really seek at this time is an advisory opinion. Several cases are apposite to illustrate this point.

*United Public Workers v. Mitchell*<sup>63</sup> concerned an action to enjoin the members of the United States Civil Service Commission from enforcing against plaintiffs a certain provision of the Hatch Act, as being repugnant to the Federal Constitution, and for a judgment declaratory of the unconstitutionality of such provision. Certain of the plaintiffs had joined in the institution of the action because they desired to act contrary to the rule against political activity, although they had not violated it.<sup>64</sup> In other words, they merely presented an abstract question. In responding to such abstraction, this Court stated that:<sup>65</sup>

As is well known the federal courts established pursuant to Article III of the Constitution do not render advisory opinions. For adjudication of constitutional issues "concrete legal issues, presented in

<sup>62</sup> This possibility is analogous to the possibility that a plaintiff may not be a candidate in future elections. *Michael v. Cockrell* (C. C. A.—4th—1947), 161 F. 2d 163, 164, r. col., 2d par.

<sup>63</sup> (1947), 330 U. S. 75, 91 L. ed. 754, 67 S. Ct. 556.

<sup>64</sup> *Id.*, 330 U. S. 88, 91 L. ed. 766, 1. col.

<sup>65</sup> *Id.*, 330 U. S. 89, 1st par., 91 L. ed. 766, r. col., 2d par.



actual cases, not abstractions," are requisite. This is as true of declaratory judgments as any other field. These appellants seem clearly to seek advisory opinions upon broad claims of rights protected by the First, Fifth, Ninth and Tenth Amendments to the Constitution.

The power of courts, and ultimately of this Court, to pass upon the constitutionality of acts of Congress arises only when the interests of litigants require the use of this judicial authority for their protection against actual interference. A hypothetical threat is not enough. We can only speculate as to the kinds of political activity the appellants desire to engage in or as to the contents of their proposed public statements or the circumstances of their publication. It would not accord with judicial responsibility to adjudge, in a matter involving constitutionality, between the freedom of the individual and the requirements of public order except when definite rights appear upon the one side and definite prejudicial interferences upon the other.

The Constitution allots the nation's judicial power to the federal courts. Unless these courts respect the limits of that unique authority, they intrude upon powers vested in the legislative or executive branches. Judicial adherence to the doctrine of the separation of powers preserves the courts for the decision of issues, between litigants, capable of effective determination. Judicial exposition upon political proposals is permissible only when necessary to decide definite issues between litigants. When the courts act continually within these constitutionally imposed boundaries of their power, their ability to perform their function as a balance for the people's protection against abuse of power by other branches of government remains unimpaired. Should the courts seek to

expand their power so as to bring under their jurisdiction ill-defined controversies over constitutional issues, they would become the organ of political theories. Such abuse of judicial power would properly meet rebuke and restriction from other branches. By these mutual checks and balances by and between the branches of government, democracy undertakes to preserve the liberties of the people from excessive concentrations of authority. No threat of interference by the Commission with rights of these appellants appears beyond that implied by the existence of the law and the regulations. *Watson v. Buck*, supra (313 U. S. p. 400, 85 L. ed. 1423, 61 S. Ct. 962, 136 A. L. R. 1426). We should not take judicial cognizance of the situation presented on the part of the appellants considered in this subdivision of the opinion. These reasons lead us to conclude that the determination of the trial court, that the individual appellants, other than Poole, could maintain this action, was erroneous.

In *Communist Party v. Subversive Activities Control Board*,<sup>66</sup> this Court again recognized that "Merely potential impairment of constitutional rights under a statute does not of itself create a justiciable controversy in which the nature and extent of those rights may be litigated."<sup>67</sup>

*Richardson v. McChesney*<sup>68</sup> concerned a writ of error to review a state court decree refusing to require a state official, when certifying the names of nominees for Congress to the clerks of the various county courts, to proceed

<sup>66</sup> (1961), 367 U. S. 1, 6 L. ed. 2d 625, 81 S. Ct. 1357. See also *International Longshoremen's and Warehousemen's Union v. Boyd* (1954), 347 U. S. 222, 223, last par., 98 L. ed. 650, 652, 1 col., last par., 74 S. Ct. 447.

<sup>67</sup> 367 U. S. 71, 2d par., 6 L. ed. 2d 674, 1 col., last par.

<sup>68</sup> (1910), 218 U. S. 487, 54 L. ed. 1121, 31 S. Ct. 43.

under the State Congressional Apportionment Act of 1882, rather than under the State Apportionment Act of 1890. The appellant contended that the 1890 Act was invalid because it failed to conform to federal congressional apportionment acts requiring that congressional districts be of contiguous territory containing as nearly as practicable an equal number of inhabitants.

Without considering the merits, this Court dismissed the writ of error, stating in part that:<sup>69</sup>

The matter which the defendant McChesney, as secretary of the commonwealth of Kentucky, is to be prohibited from doing, relates solely to an election to be held in November, 1908, and the thing which he is to be required to do relates only to the same election. The election to be affected by a decree, according to the prayer of the bill, has long since been held, and the members of Congress were, in November, 1908, elected under the apportionment act of 1890. They were, as we may judicially know, admitted to the respective seats, and, as we may also take notice, their successors have been elected according to the same scheme of apportionment. The thing sought to be prevented has been done, and cannot be undone by any judicial action. Under such circumstances there is nothing but a moot case. *Mills v. Green*, 159 U. S. 651, 40 L. ed. 293, 16 Sup. Ct. Rep. 132; *Jones v. Montague*, 194 U. S. 147, 48 L. ed. 913, 24 Sup. Ct. Rep. 611.

The duty of the court is limited to the decision of actual pending controversies, and it should not pronounce judgment upon abstract questions, however such opinion might influence future action in like circumstances.

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<sup>69</sup> Id., 218 U. S. 492, 3d par., 54 L. ed. 1122, 1. col., last par.



This dismissal is significant because the appellant had alleged that the 1890 Act violated the requirements of the federal congressional reapportionment acts and, hence, the alleged violation would recur at each election of Representatives so long as the acts remained in force. Nevertheless, this Court determined the issue to be moot.

The decision in *Mills v. Green*,<sup>70</sup> relied upon in *Richardson*, stated in part that:<sup>71</sup>

The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal.

In *Fortson v. Cook*<sup>72</sup> and *Furman v. Duckworth*,<sup>73</sup> the appellants sought declaratory and injunctive relief aimed at the invalidation of Georgia's county unit system for tabulating votes in party primaries. This Court in dismissing the appeals cited *United States v. Anchor Coal Company*<sup>74</sup> as authority for dismissal on the ground of

<sup>70</sup> (1895), 159 U. S. 651, 40 L. ed. 293, 16 S. Ct. 132.

<sup>71</sup> *Id.*, 159 U. S. 653, last par., 40 L. ed. 293, r. col., last par.

<sup>72</sup> (1946), 329 U. S. 675, 91 L. ed. 596, 67 S. Ct. 21, reh. den. (1946), 329 U. S. 829, 91 L. ed. 703, 67 S. Ct. 296.

<sup>73</sup> *Id.*

<sup>74</sup> (1929), 279 U. S. 812, 73 L. ed. 971, 49 S. Ct. 262.

mootness, irrespective of the obvious application of the county unit system to future primaries.<sup>75</sup>

In view of these authorities, it is clear that this appeal no longer presents a controversy susceptible of judicial determination.

#### B. NO SUBSTANTIAL FEDERAL QUESTION.

In *Remmey v. Smith*,<sup>76</sup> the plaintiffs sought to have the Pennsylvania Apportionment Act of 1921 declared unconstitutional and to compel the state legislature to reapportion state representative and senatorial districts. The three-judge district court held that the suit was premature and dismissed for want of equity. In its opinion, the court stated in part that:<sup>77</sup>

The determination which the plaintiffs would have us make lies in that extremely sensitive field, the relation of the powers of the National Government to those of the States. Here, of all places, a federal court should tread warily and with great circumspection and should forego any action where relief may be furnished by the State. This court should not intervene where an apparent, but untried, remedy may lie in the Courts of the Commonwealth of Pennsylvania. Those Courts may declare the present operation of the Apportionment Act of 1921 to be unconstitutional under the Pennsylvania Constitution. . . . Moreover, and this we deem to be a most cogent circumstance, the 1951 General Assembly of the Commonwealth of Pennsylvania is in session. This is the

<sup>75</sup> This point was touched upon by Justice Rutledge in his opinion. See 329 U. S. 677, 2d par., 91 L. ed. 597, r. col., last par.

<sup>76</sup> (D. C.—E. D. Pa.—1951), 102 F. Supp. 708.

<sup>77</sup> Id., 102 F. Supp. 711, l. col., 2d par.

first General Assembly convened following the United States decennial census of 1950. The 1951 General Assembly has the opportunity to act in respect to this most important matter and, if it does, may pass a reapportionment act which will meet every constitutional requirement. Under these circumstances action by this court at this time would, at best, be premature. (Emphasis supplied.)

Upon appeal, this Court entered a *per curiam* opinion stating in part that "The motion to dismiss is granted and the appeal is dismissed for the want of a substantial Federal question."<sup>78</sup>

The dismissal granted by this Court in *Remmey* is even more appropriate in this case because it involves congressional redistricting in contrast with state legislative reapportionment and, furthermore, because there is a stronger likelihood in this case that the state legislature will afford the relief sought by the Appellants.

### CONCLUSION.

The Judgment of the United States District Court for the Northern District of Georgia, sought to be reviewed in this cause, should be affirmed on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument; or, in the alternative, the appeal in this cause should be dismissed, (a) on the ground that the matters in controversy in this action and upon this appeal have become abstract and moot by virtue of the holding of the General Election on November 6, 1962, and the election therein of the Representatives of the people of Georgia in

<sup>78</sup> *Remmey v. Smith* (1952), 342 U. S. 916, 96 L. ed. 685, 72 S. Ct. 368.



the House of Representatives of the Congress of the United States, or, (b) on the ground that it presents no substantial federal question.

Respectfully submitted,

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Assistant Attorney General.

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P. O. Address:

132 Judicial Building.  
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November 8, 1962.

**APPENDIX A.**

**A PROCLAMATION BY  
HIS EXCELLENCY  
GOVERNOR S. ERNEST VANDIVER  
OF  
THE STATE OF GEORGIA  
CONVENING THE GENERAL ASSEMBLY OF  
GEORGIA IN EXTRAORDINARY SESSION**

Whereas: On May 23, 1962, in the case entitled *Toombs vs. Fortson, et al.*, a three-judge Federal Court held and declared that the General Assembly of Georgia as presently constituted "fails to meet Constitutional requirements" in that neither House thereof is apportioned according to population; and

Whereas: In a supplemental opinion rendered on September 5, 1962, the Court further held that the General Assembly must be reconstituted so that at least one House thereof will have been reapportioned according to population "coincident with the convening of the General Assembly" in January, 1963, or reapportionment would be effectuated by judicial decree; and

Whereas: As pointed out by the Court, such reapportionment may be achieved most feasibly with respect to the State Senate; and

Whereas: The people of Georgia, acting by and through their General Assembly, possess the innate capability of resolving their governmental problems without the intervention of the federal judiciary; and

Whereas: The consideration of comity arising from the delicate problems of federal-state relations under the federal system demand that this grave issue be resolved by the people's chosen representatives in keeping with the

Democratic principles incident to a Republican form of government; and

Whereas: Other urgent problems have also arisen concerning administration under the State Toll Bridge Authority Act which problems require immediate legislative consideration; and

Now, therefore: Upon consideration of the premises stated, and under and by virtue of the power and authority vested in me by the Constitution of Georgia, Article V, Section I, Paragraph XII, I, S. Ernest Vandiver, Governor of Georgia, do hereby convoke and call a meeting of the General Assembly of Georgia in extraordinary session at 11:00 A. M., Eastern Standard Time, on Thursday, September 27, 1962, for the purposes of considering and enacting laws and proposed constitutional amendments by way of revision, repeal, supersession, enactment, amendment or otherwise relating to (1) nomination and election of Senators, the composition and reapportionment of the Senate; the creation, composition, reconstitution and rearrangement of Senatorial Districts; (2) the Constitutional corporate existence, powers and duties of the State Toll Bridge Authority, as created by an Act approved March 2, 1953 (Ga. Laws 1953, Jan. and Feb. Sess., p. 302), all of which are found and concluded by me to be of sufficient importance to demand the necessity of such extraordinary session of the General Assembly.

Given under my hand and the Great Seal of the State of Georgia, at the City of Atlanta, on this 14th day of September, in the year of Our Lord, one thousand nine hundred and sixty-two.

/s/ S. Ernest Vandiver  
Governor

By the Governor

/s/ Ben W. Fortson, Jr.  
Secretary of State



## APPENDIX B.

### REAPPORTIONMENT OF SENATE.

Code §§ 34-1904, 34-1914 and 47-102 Amended.

#### No. 1 (Senate Bill No. 1).

An Act to provide for the reapportionment of the State Senate; to amend an Act, relating to Senatorial Districts of the State, approved February 1, 1946 (Ga. L. 1946, p. 42), as amended by an Act approved February 14, 1950 (Ga. L. 1950, p. 165), so as to remove the provisions providing for the furnishing of Senators; to repeal an Act entitled "An Act to regulate political primary elections for the nomination of candidates for the State Senate; to provide that such primary elections shall be held in the various Senatorial Districts only in the County entitled to furnish the nominees under the rotation system; and for other purposes," approved March 23, 1939 (Ga. L. 1939, p. 311); to provide the procedure for the nomination and election of State Senators for the 1963-64 Term; to amend Code section 34-1904, relating to ballots in elections other than primary elections, as amended, so as to change the provisions relating to members of the State Senate; to provide for the procedure for future nominations of members of the State Senate; to amend an Act, relating to county primaries, approved February 20, 1956 (Ga. L. 1956, p. 159), as amended, so as to remove the provisions relating to members of the State Senate; to amend an Act providing for absentee voting by members of the Military, approved February 26, 1953 (Ga. L. 1953, Jan.-Feb. Sess., p. 244), as amended, so as to provide the date on which future primaries for the nomination of State Senators shall be held; to amend an Act, relating to ballots in primary elections and

the qualifying of candidates in primary elections, approved March 12, 1941 (Ga. L. 1941, p. 324), so as to change the provisions relating to qualifying; to amend Code section 47-102, relating to State Senatorial Districts, as amended, so as to provide for the composition and number of State Senatorial Districts and the number of Senators; to provide for future reapportionment of the State Senate; to provide requirements for residence; to provide for the suspension of certain laws and the applicability of certain provisions of this Act; to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia:

Section 1. An Act relating to the Senatorial Districts of the State of Georgia, approved February 1, 1946 (Ga. L. 1946, p. 42), as amended by an Act approved February 14, 1950 (Ga. L. 1950, p. 165), is hereby amended by striking section 2 which reads as follows:

“Section 2. The first county named in each of the above sections shall furnish the senator for the next general election and after that the counties in the order named above shall furnish the senator for that district. In all senatorial districts of the State of Georgia comprised of two (2) counties, the county having a population according to the census of 1940 or any future census of more than double the population of the other county in said district shall furnish the senator for two (2) successive terms at the expiration of which the smaller county shall furnish the Senator for one (1) term. The county having the population of more than double that of the other county as aforesaid shall furnish the senator for the next general election of 1950. In the general election of 1952 the smaller county shall furnish the senator and in the general election of 1954 and 1956 the county having the larger population as aforesaid shall furnish the senator and said order

of furnishing the senator from such districts shall continue the manner aforesaid."

in its entirety.

Section 2. An Act entitled: "An Act to regulate political primary elections for the nomination of candidates for the State Senate; to provide that such primary elections shall be held in the various Senatorial Districts only in the county entitled to furnish the nominees under the rotation system; and for other purposes," approved March 23, 1939 (Ga. L. 1939, p. 311), is hereby repealed in its entirety.

Section 3. Senatorial candidates nominated in the State Primary of September 12, 1962, or in the run-off Primary of September 26, 1962, or in any earlier county primary shall not be placed on the General Election ballot by virtue of such nomination, but any political party desiring to nominate candidates by primary for election to the State Senate for the 1963-64 term shall hold a special senatorial primary on October 16, 1962, and with respect to those Districts in which no candidate receives a majority of the total vote cast in such primary, such political party shall hold a runoff primary between the top two candidates therein on October 23, 1962. Each candidate for the State Senate, or the proper authority of the party nominating him, shall file notice of his candidacy with the Secretary of State by October 25, 1962, and the names of all such candidates in each District shall be placed on the ballot of such District for the general election on November 6, 1962. Provided that any candidate who was not nominated in such a special senatorial primary in addition to the foregoing, shall file a petition, conforming to all the requirements of Georgia Code section 34-1904, as amended, not in conflict herewith, with the Secretary of State, signed by not less than five per cent (5%) of the registered voters of the District in which he is a candidate. The State



Executive Committee of each party holding a primary in any District under the foregoing provisions shall adopt rules providing for uniform opening and closing dates for such primary, for uniform qualifying fees, run-over primaries, and all other rules or regulations needful or necessary to the conduct of such primary.

Any person offering as a candidate in the aforesaid Primary on October 16, 1962, in a District composed of one county or less must have been a resident and a registered voter of such District for the twelve (12) months immediately preceding said date. Any person offering as a candidate in the aforesaid Primary on October 16, 1962, in a District composed of more than one county must have been a resident and a registered voter of the particular county in said District from which he offers as a candidate for the twelve (12) months immediately preceding said date.

Section 4. Code section 34-1904, relating to ballots in elections other than primary elections, as amended, particularly by Acts approved October 2, 1948 (Ga. L. 1948, Ex. Sess., p. 3), and March 6, 1962 (Ga. L. 1962, Vol. I, p. 618), is hereby amended by striking paragraph (b) thereof and by substituting in lieu thereof the following:

“(b) It shall not be the duty of said officers to place the names of any candidates on said official ballots unless notice of their candidacy shall be given in the following manner: All candidates for national and State offices, except Justices of the Peace and candidates for membership in the House of Representatives, but including candidates for membership in the State Senate, members of the General Assembly being hereby declared to be State Officers, or the proper authority of the political party nominating them, shall file notice of their candidacy, giving their names and the offices for which they are candidates, with the Secretary of State, at least forty-five (45) days prior to the regular election, except in cases where a second

primary election is necessary. The names of such candidates shall be filed with the Secretary of State as soon as possible after the determination of the result of said second primary, but no later than five (5) days after such second primary. All candidates for county offices and all candidates for membership in the House of Representatives of the General Assembly, either by themselves or by the proper authority of the political party nominating them, shall file notice of their candidacy with the Ordinary of the County at least forty-five (45) days before the regular election. Provided that, if any such candidate listed herein shall not be the nominee of a political party by primary held for such office in the territory, as hereinafter defined, in which he is a candidate, or shall not be the nominee of a political party that shall have cast more than five per cent (5%) of the votes for such office in the last immediately preceding General Election for the election of such officer, then any such candidate shall, in addition to the foregoing, file a petition signed by not less than five per cent (5%) of the registered voters of the territory in which he is a candidate. The provisions relating to filing such petition shall not apply to special elections, to the office of Justice of the Peace, to any office created since the last General Election, nor to candidates for county offices and membership in the House of Representatives if no political party primary is held in the county for such offices. The petition of five per cent (5%) of the registered voters provided for hereinbefore shall be used for only one individual candidate, and two or more candidates shall not be permitted to utilize the same petition. The term 'territory' as used hereinabove shall mean the area in which the voters who are authorized to vote for such candidate reside, except that such term shall mean the judicial circuit when the office of Judge of the Superior Court or Solicitor General is sought by a candidate. The petition signed by five per cent (5%) of the

voters, as aforesaid, shall be accompanied by a sworn statement signed by the candidate or the highest official of the political party of the territory involved, or both, to the effect that each of the persons whose name appears on said petition was a duly qualified and registered voter at the last general election, and that each such voter whose name is listed on said petition signed his own name on said petition. All candidates for municipal offices shall file notice of their candidacy either by themselves or by the proper authority of the party nominating them in the manner and in the time provided by the charter of said municipality, or in the event such is not covered by said charter such notice shall be filed with the proper election officials of the municipality not less than fifteen (15) days before the regular election. In the event of the resignation or death of any nominee of any political party prior to the regular election, at which the name of said nominee is to appear on the official ballot, said vacancy in nomination shall be filled in such manner as may be determined by the proper authority of such party."

Section 5. With respect to political party primaries for nomination to the State Senate for the 1956-66 term and thereafter, any person desiring to offer as a candidate for nomination by primary in any State senatorial district shall qualify with the State Executive Committee of his party, which shall prescribe uniform rules and uniform qualifying fees to be applicable to the conduct of primaries in each senatorial district throughout the State. The State Executive Committee shall bear the cost of holding and conducting such primaries and may call upon county executive committees to assist in holding and conducting such primaries. The State Executive Committee shall certify all State Senatorial nominees to the Secretary of State for placement on the General Election ballot as otherwise provided by law.



Section 6. Section 1 of an Act approved February 20, 1956 (Ga. L. 1956, Vol. I, p. 159), as amended by an Act approved February 15, 1960 (Ga. L. 1960, p. 116), relating to county primaries, is hereby amended by striking said section and by inserting in lieu thereof the following:

Section 1. "Any other provision of law to the contrary notwithstanding, any person who has been or who hereafter is nominated for membership in the House of Representatives, either in a County primary or the State primary, shall be the nominee of such political party, and the names of such candidates shall be placed on the general election ballot as the official nominee of such party; provided, however, no county primary in which candidates for the House of Representatives are voted on shall be conducted prior to the first day of March of any year, and when so called, all candidates for nomination to the House of Representatives shall run therein."

Section 7. An Act providing for absentee voting by members of the military, approved February 26, 1953 (Ga. L. 1953, Jan.-Feb. Sess., p. 244), as amended, particularly by an Act approved December 22, 1953 (Ga. L. 1953, Nov.-Dec. Sess., p. 335), and an Act approved April 5, 1961 (Ga. L. 1961, p. 432), and an Act approved February 9, 1962 (Ga. L. 1962, Vol. I, p. 15) is hereby amended by striking paragraph 2 of section 8 in its entirety, and inserting in lieu thereof the following:

2. Whenever any political party shall hold primary elections for nomination of candidates for the office of Governor, State House Officials, United States Senators, Members of Congress, Justices of the Supreme Court, Judges of the Court of Appeals, Judges of the Superior Courts, State Senators, and Solicitors-General, the same shall be held on one and the same date throughout the State, which shall be on the second Wednesday in September of each year in which there is a regular general

election. The foregoing provisions shall apply to any such primary election held in the year 1964, and thereafter, but shall not apply to the special primaries for State Senators held in 1962."

Section 8. Section 1 of an Act approved March 12, 1941 (Ga. L. 1941, p. 324; Code Ann., sec. 34-1914), relating to ballots in primary elections and the qualifying of candidates in primary elections, is hereby amended by striking therefrom the last sentence, and by inserting in lieu thereof the following:

"All candidates for nomination for county offices shall qualify as such candidates in accordance with the rules of the party calling the primary, not later than 30 days previous to the holding of such primary, and the Committee or other party authority of such party shall not fix any other or different time limit for qualifications, provided, however, that this provision shall not apply to special primary elections to fill vacancies."

Section 9. Code section 47-102, relating to State Senatorial Districts, as amended, is hereby amended by striking said Section in its entirety and inserting in lieu thereof a new Code section 47-102 to read as follows:

"There shall be fifty-four (54) Senatorial Districts of the State of Georgia, each to be represented by one Senator, and such Districts shall be distributed and composed of the various counties or portions of counties of said State as follows:

1. That portion of Chatham County, more particularly described as follows:

All that land starting from a point 85' north east of the projection of the centerline of Bull Street; then in a southeasterly direction along the centerline of Bull Street to its intersection with the centerline of Victory Drive; then in

an easterly direction along the centerline of Victory Drive to its intersection with the centerline of Skidaway Road; then in a southerly direction along the centerline of Skidaway Road to its intersection with the centerline of DeRenne Avenue; then in a westerly direction along the centerline of DeRenne Avenue to its intersection with the centerline of the Casey Canal; then in a southeasterly direction along the centerline of the Casey Canal to its intersection with the centerline of Bacon Park Drive; then in an easterly direction along the centerline of Bacon Park Drive to its intersection with the centerline of the Power Line; then in a southerly direction along the centerline of the Power Line to its intersection with the centerline of Intermediate Road; then in an easterly direction along the centerline of Intermediate Road to its intersection with the centerline of Skidaway Road; then in a southerly direction along the centerline of Skidaway Road to its intersection with the centerline of Montgomery Cross Road; then in a westerly direction along the centerline of Montgomery Cross Road to its intersection with the east boundary line of Hunter Air Force Base; then in a northerly direction along the east boundary line of Hunter Air Force Base to its intersection with the centerline of Middleground Road; then in a northeasterly direction along the centerline of Middleground Road to its intersection with the centerline of Montgomery Street; then in a northeasterly direction along the centerline of Montgomery Street to its intersection with the centerline of 52nd Street extended; then in a westerly direction along the centerline of 52nd Street extended to the city limits line; then in a northwesterly direction along the corporate limit line of the City of Savannah to its intersection with the centerline of Stiles Avenue; then in a northeasterly direction along the centerline of Stiles Avenue to its intersection with the centerline of Louisville Road; then in a westerly direction along the centerline of Louisville Road to its intersection with the



centerline of Lathrop Avenue East; then in a northerly direction along the centerline of Lathrop Avenue East to its intersection with the corporate limit line of the City of Savannah; then in a northeasterly direction along the corporate limit line of the City of Savannah to a point 85' northeast of the projection of the centerline of Bull Street.

2. That portion of Chatham County, more particularly described as follows:

All that area bounded on the north starting from a point 85' northeast of the projection of the centerline of Bull Street; then in a northeasterly direction along the centerline of the corporate limit line projected to the county limit line; then along the county limit line along the Back River to the northeasterly tip of Elba Island; then in a southwesterly direction along the centerline of the Savannah River to its intersection with the projection of the centerline of the South Channel; then in a southeasterly direction along the centerline of the South Channel to its intersection with projection of the centerline of the Wilmington River; then in a southwesterly direction along the centerline of the Wilmington River to its intersection with the projection of the northern line of the corporate limits of the Town of Thunderbolt; then in a westerly direction along said northern line and in a southerly direction and in an easterly direction along the contour of the line representing the corporate limits of the Town of Thunderbolt to a point where the southern line of the corporate limits of the Town of Thunderbolt projected again intersects with the center line of Wilmington River; then in an easterly direction along the centerline of the Wilmington River to its intersection with the projection of the centerline of the Herb River; then in a southwesterly direction along the centerline of the Herb River to its intersection with the centerline of Skidaway Road; then in a northerly direction along the centerline of Skidaway

Road to its intersection with the centerline of Intermediate Road; then in a westerly direction along the intersection of Intermediate Road to its intersection with the centerline of the Power Line; then in a northerly direction along the centerline of the Power Line to its intersection with the centerline of Bacon Park Drive; then in a westerly direction along the centerline of Bacon Park Drive to its intersection with the centerline of the Casey Canal; then in a northeasterly direction along the centerline of the Casey Canal to its intersection with the centerline of DeRenne Avenue; then in an easterly direction along the centerline of DeRenne Avenue to its intersection with the centerline of Skidaway Road; then in a northerly direction along the centerline of Skidaway Road to its intersection with the centerline of Victory Drive; then in an easterly direction along the centerline of Victory Drive to its intersection with the centerline of Bull Street; then in a northerly direction along the centerline of Bull Street to its intersection with the corporate limit line of the City of Savannah.

3. That portion of Chatham County, more particularly described as follows:

All that land inside the county limit line of Chatham County not included in Districts One and Two.

4. Screven, Effingham, Bulloch, Candler, Evans, and Tattnall

5. Bryan, Liberty, Long, McIntosh and Glynn

6. Jeff Davis, Appling, Bacon, Wayne, Pierce, Brantley, Charlton and Camden

7. Atkinson, Clinch, Coffee, Lanier and Ware

8. Berrien, Cook, Echols and Lowndes

9. Brooks, Colquitt and Tift

10. Grady, Mitchell and Thomas
11. Baker, Calhoun, Clay, Decatur, Early, Miller, and Seminole

12. Dougherty County

13. Ben Hill, Crisp, Irwin, Lee, Turner and Worth
14. Chattahoochee, Randolph, Stewart, Sumter, Terrell, Webster and Quitman

15. That portion of Muscogee County, more particularly described as follows:

That area south of a point where the centerline of 17th Street intersects the Chattahoochee River and running thence in an easterly direction along the centerline of said 17th Street to the centerline of Dell Drive and running thence south along the centerline of Dell Drive to the centerline of Macon Road and running thence in an easterly direction along the centerline of said Macon Road to the east line of Muscogee County.

16. That portion of Muscogee County, more particularly described as follows:

That area north of a point where the centerline of 17th Street intersects with Chattahoochee River and running thence in an easterly direction along the centerline of said 17th Street to the centerline of Dell Drive and running thence south along the centerline of Dell Drive to the centerline of Macon Road and running thence in an easterly direction along the centerline of said Macon Road to the east line of Muscogee County.

17. Harris, Macon, Marion, Schley, Talbot, Taylor and Upson

18. Crawford, Twiggs, Houston and Peach



19. Bleekley, Dodge, Pulaski, Telfair, Dooly and Wilcox  
20. Johnson, Laurens, Treutlen, Wheeler, Montgomery  
and Toombs

21. Emanuel, Jenkins, Burke and Jefferson

22. That portion of Richmond County, more particularly  
described as follows:

All that territory in Richmond County lying and being  
within the corporate limits of the City of Augusta.

23. That portion of Richmond County, more particularly  
described as follows:

All that territory in Richmond County lying and being  
outside the corporate limits of the City of Augusta.

24. Wilkes, Lincoln, Columbia, McDuffie, Glascock, War-  
ren, Taliaferro and Greene

25. Hancock, Baldwin, Washington, Wilkinson and Jones

26. That portion of Bibb County, more particularly de-  
scribed as follows:

All that portion of Bibb County lying east and north of  
a line commencing on the south county line where U. S.  
Highway 41 crosses the county line and then going north  
along U. S. Highway 41 to the point where it intersects Pio  
Nono Avenue, continuing north along Pio Nono Avenue to  
the point where it is intersected by Newberg Avenue, east  
along Newberg Avenue to the point where it intersects  
Houston Avenue; thence northeast along Houston Avenue  
to the point where it intersects Broadway, northeast along  
Broadway to the point where it intersects Riverside Drive;  
thence northwest along Riverside Drive to the point where  
it intersects Forrest Avenue; thence southwesterly along  
Forrest Avenue to the point where it intersects Vineville  
Avenue; thence northwesterly along Vineville Avenue.

which is also U. S. Highway 41, and continuing along U. S. Highway 41 to the Monroe County line.

27. That portion of Bibb County, more particularly described as follows:

21  
All that portion of Bibb County lying west and south of a line commencing on the south county line where U. S. Highway 41 crosses the county line and then going north along U. S. Highway 41 to the point where it intersects Pio Nono Avenue, continuing north along Pio Nono Avenue to the point where it is intersected by Newberg Avenue, east along Newberg Avenue to the point where it intersects Houston Avenue; thence northeast along Houston Avenue to the point where it intersects Broadway, northeast along Broadway to the point where it intersects Riverside Drive; thence northwest along Riverside Drive to the point where it intersects Forrest Avenue; thence southwesterly along Forrest Avenue; thence southwesterly along Forrest Avenue to the point where it intersects Vineville Avenue; thence northwesterly along Vineville Avenue, which is also U. S. Highway 41, and continuing along U. S. Highway 41 to the Monroe County line."

28. Butts, Lamar, Monroe, Pike and Spalding

29. Heard, Meriwether and Troup.

30. Carroll, Coweta and Fayette.

31. Douglas, Haralson, Paulding and Polk.

32. That portion of Cobb County, more particularly described as follows:

All that part of Cobb County lying and being in Militia Districts Gritter (911), Post Oak (1319), Elizabeth (1897), Fullers (1679), Merritts (897), Smyrna (1292), Vinings (1568), Lemons (992), and Wards 1, 5, 6, and 7 of the City of Marietta.

33. That portion of Cobb County, more particularly described as follows:

All that part of Cobb County lying and being in Militia Districts Acworth (851), Big Shanty (991), Red Rock (1318), Lost Mountain (1540), Oregon (1017), Macland (1608), Powder Springs (846), Clarkdale (1826), Austell (1378), Coxes (895), Howells (1395), Fair Oaks (1891), and Wards 2, 3, and 4 of the City of Marietta, and also that portion of the Marietta Militia District (898) outside the corporate limits of the City of Marietta.

34. That portion of Fulton County, more particularly described as follows:

Beginning at a point in the City of Atlanta in land lot 118 of the 14th district of Fulton County, Georgia at the southeast corner of Beecher Street at its intersection with White Street and Lawton Street and thence in an easterly direction along the south side of Beecher Street to its intersection with the west side of Lee Street; thence in a southerly direction along the west side of Lee Street to the intersection of Lee Street with West Whitehall Street and the west side of the right-of-way of the Central of Georgia railroad; thence southerly along the western side of the Central of Georgia railroad right-of-way to a point where the Atlanta and West Point Railway merges with the Central of Georgia railroad, in the City of East Point; thence continuing in a southerly direction along the western side of the right-of-way of the Atlanta and West Point railroad to the intersection of said right-of-way with the Fulton County-Clayton County boundary line; thence northerly; thence westerly and thence in a southerly direction along the said Fulton County-Clayton County boundary line to the intersection of said boundary line with the Fulton County-Fayette County boundary line; thence in a south-westerly direction following the meanderings of the said Fulton County-Fayette County boundary line to its inter-



section with the Fulton County-Coweta County boundary line; thence westernly along the Fulton County-Coweta County boundary line to the intersection of said boundary line with the Fulton County-Douglas County boundary line at the Chattahoochee River; thence in a northerly direction following the meanderings of the Fulton County-Douglas County boundary line and the Fulton County-Cobb County boundary line along the Chattahoochee River to the point where Utoy Creek flows into the Chattahoochee River; thence in an easterly direction along the south side of said creek to a point where Fairburn Road intersects said creek, which point is just south of the intersection of Fairburn Road with Cascade Road; thence in a northerly direction along the east side of Fairburn Road to its intersection with the Atlantic Coast Line<sup>b</sup> Railroad; thence continuing in a northerly direction along the east side of the right-of-way of the Atlantic Coast Line Railroad to the intersection of said railroad and Brownlee Road in the city limits of Atlanta; thence in a southerly direction along the western side of Brownlee Road to the intersection of said road with North Utoy Creek; thence in a generally eastern direction along the south side of said creek following the meanderings thereof to a point in the John A. White Park where Beecher Court would intersect said creek if extended in a southerly direction into said park; thence north along the imaginary extension of Beecher Court to Beecher Court; thence continuing in a northerly direction along the eastern side of Beecher Court to its intersection with Beecher Street; thence in an eastern direction along the south side of Beecher Street to its intersection with Donnelly Avenue; thence in a southeasterly direction along the southwest side of Donnelly Avenue to its intersection with Lawton Street; thence in a northeasterly direction along the southeast side of Lawton Street to its intersection with White Street and Beecher Street and the point of beginning.

35. That portion of Fulton County, more particularly described as follows:

Beginning at a point on the southern boundary of land lot 108 of the 14th district of Fulton County, Georgia, which southern boundary is Gordon Street and Glenn Street, in Atlanta, Georgia, and at the intersection of Gordon and Glenn Streets with the Central of Georgia Railroad, thence in a northerly direction along the east side of the right-of-way of the Central of Georgia Railway to the intersection of said railroad with Fair Street; thence in a northwesterly direction along the north east side of Fair Street to its intersection with Walker Street; thence north along the east side of Walker Street to its intersection with Nelson Street; thence northeasterly along the south side of Nelson Street to its intersection with Elliott Street; thence continuing in a northerly direction along the east side of Elliott Street to the intersection of Elliott Street with Simpson Street and the Georgia Railroad; thence in a southeasterly direction along the south west side of the right-of-way of the Georgia Railroad to its intersection with Magnolia Street, and thence continuing along the right-of-way of the Georgia Railway in a southeasterly direction, which is also the southern boundary of Senatorial District 27 of Fulton County, to the intersection of the said right-of-way with Oakland Avenue, which is at the northwest corner of Oakland Cemetery; thence in a southerly direction along the west side of Oakland Avenue to the north side of Memorial Drive; thence west along the north side of Memorial Drive to Kelly Street; thence south along the west side of Kelly Street; and continuing across the East Expressway to the extension of Kelly Street continuing to the intersection of Kelly Street with Glenwood Avenue; thence west along the north side of Glenwood Avenue to Connally Street, thence south along the west side of Connally Street to its intersection with the north side of Fulton Street; thence west along the north side of

Fulton Street and following the north side of Fulton Street, north then west to the intersection of Fulton Street, with the west side of Capitol Avenue; thence south along the west side of Capitol Avenue to its intersection with the Atlanta and West Point Railroad; thence southwestwardly along the north side of the right-of-way of the Atlanta and West Point Railroad to its intersection with the South Expressway (Interstate 75); thence south along the west side of the South Expressway to a point where said expressway intersects the boundary line between Hapeville and Atlanta's City limits; thence in a southerly direction, following the Hapeville-Atlanta boundary line to the Central of Georgia Railroad; thence westwardly following the Hapeville-Atlanta boundary line to a point where said boundary turns south; thence south along said Atlanta-Hapeville boundary to the point where said boundary intersects with the Fulton County-Clayton County boundary line; thence west along said county boundary line to a point where said boundary line turns south; thence continuing south along said boundary line to a point where it turns west; thence west along said Fulton County-Clayton County boundary line to a point where it turns north; and thence north along said boundary line to a point where it intersects the Atlanta and West Point railway right-of-way; thence north along the east side of the Atlanta and West Point right-of-way; which right-of-way also is the eastern boundary of Senatorial District 34, to the intersection of said Atlanta and West Point right-of-way with the Central of Georgia right-of-way, and thence continuing in a northerly direction along the east side of the Central of Georgia right-of-way and the boundary line of the 34th Senatorial District, to a point where said railroad right-of-way intersects with Gordon Street and Glenn Street and the point of beginning.

36. That portion of Fulton County, more particularly described as follows:



Beginning on the eastern border of land lot 14 of the 14th district of Fulton County Georgia, which is also the Fulton County-DeKalb County boundary line, at a point on said boundary where it intersects with the right of way of the Georgia Railroad; thence in a southwestern direction along the south side of the right of way of the Georgia Railway to the intersection of said right of way with Oakland Avenue, which is at the northwest corner of Oakland Cemetery; thence in a southerly direction following the eastern boundary of the 35th Senatorial District, and continuing to follow the meanderings of said boundary south along Oakland Avenue; West along Memorial Drive, south along Kelly Street, west along Glenwood Avenue, south along Copnally Street, west, north and west again along Fulton Street, thence south along Capitol Avenue, thence southwestwardly along the right of way of the Atlanta and West Point Railroad, thence south along the South Expressway, and thence continuing to follow the boundary of said Senatorial District 35 along the Atlanta-Hapeville boundary line to the intersection thereof with the Fulton County-Clayton County boundary; thence east along the Fulton County and Clayton County boundary line to its intersection with the Fulton County-DeKalb County boundary line; thence north along the Fulton County-DeKalb County boundary line to its intersection with the Georgia Railroad right of way and the point of beginning.

37. That portion of Fulton County, more particularly described as follows:

Beginning at a point on the eastern border of land lot 10 of the 17th district of Fulton County, Georgia, which border is also the Fulton County-DeKalb County boundary line, where the Southern Railroad intersects the said eastern border of land lot 10; and thence in a southerly direction along the Fulton-DeKalb County boundary line to the intersection of said boundary with the Georgia Railroad

which intersection is on the eastern boundary of land lot 14 of the 14th district of Fulton County, Georgia; thence in a southwestern direction along the north side of the right of way of the Georgia Railroad and continuing along the north side of said right of way as same turns to the north, and continuing in a northwestern direction along said right of way, generally parallel with Decatur Street and Marietta Street in downtown Atlanta, to the intersection of said right of way with Magnolia Street; thence in a north-easterly direction along the west side of Magnolia Street to its intersection with Luckie Street and Cain Street; thence in an easterly direction along the south side of Cain Street to the intersection of Cain Street and Williams Street; thence in a northerly direction along the eastern side of Williams Street to its intersection with North Avenue; thence in an eastern direction along the south side of North Avenue to the intersection of North Avenue with West Peachtree Street; thence north along the east side of West Peachtree Street to its intersection with Tenth Street; thence east along the south side of Tenth Street to its intersection at Monroe Drive with the right of way of the Southern Railroad; thence north along the east side of the right of way of the Southern Railroad to the intersection of said right of way with the Fulton-DeKalb County boundary line and the point of beginning.

38. That portion of Fulton County, more particularly described as follows:

Beginning at a point on the southern boundary of land lot 108 of the 14th district of Fulton County, Georgia, which southern boundary is Gordon and Glenn Streets and at the intersection of Gordon and Glenn Streets with the Central of Georgia Railroad; thence in a southerly direction along the eastern side of the right of way of the Central of Georgia railway to a point on the said right of way where Lee Street intersects with West Whitehall Street;

thence in a northerly direction along the east side of Lee Street to its intersection with Beecher Street; thence in a westernly direction along the north boundary of Senatorial District 34 of Fulton County, following Beecher Street, Lawton Street, Beecher Street, Beecher Court, North Utoy Creek, Brownlee Road, the right of way of the Atlantic Coast Line Railroad, Fairburn Road, Utoy Creek, westwardly to the Chattahoochee River, at which point the north boundary of Senatorial District 34 intersects the Fulton County-Cobb County boundary line; thence in a northeasternly direction following the meanderings of the Fulton County-Cobb County boundary line along the Chattahoochee River to a point where the Southern Railroad crosses the Chattahoochee River, at which point the southwestern boundary of Senatorial District 39 intersects the Fulton County-Cobb County boundary; thence in an easterly direction following the southwestern boundary of the 39th Senatorial District along the Southern Railroad, Marietta Road, Perry Boulevard, West Marietta Street, continuing to follow said boundary south along Ashby Street, and thence easterly along Gordon Street to the intersection of Gordon with Glenn Streets and the Central of Georgia Railroad and the point of beginning.

39. That portion of Fulton County, more particularly described as follows:

Beginning at a point on the southern boundary of land lot 108 of the 14th district of Fulton County, Georgia, which southern boundary is Gordon and Glenn Streets, and at the intersection of Gordon and Glenn Streets with the Central of Georgia Railroad; and thence north along the northwest side of the right of way of the Central of Georgia Railroad to the intersection of said railroad with Fair Street; thence northwestwardly along the southwest side of Fair Street to its intersection with Walker Street;



thence north along the west side of Walker Street to its intersection with Nelson Street; thence northeastwardly along the north side of Nelson Street to its intersection with Elliott Street; thence continuing in a northerly direction along the west side of Elliott Street to the intersection of Elliott with Simpson Street and the Georgia Railroad; thence in a southeasterly direction along the east side of the right of way of the Georgia Railroad to the intersection of said railroad and Magnolia Street; thence in a northeasterly direction along Magnolia Street, which is the eastern boundary of Senatorial District 37 and continuing along the eastern boundary of Senatorial District 37 along Cain Street, Williams Street, North Avenue, West Peachtree Street, Tenth Street to the right of way of the Southern Railway and continuing along said boundary in a northerly direction along the right of way of the Southern Railway to the intersection of the said right of way with the main line of the Southern Railway in land lot 103 of the 17th district of Fulton County; thence in a southeasterly direction along the northwest side of the right of way of the main line of the said Southern Railway to the intersection of said railway with the Northwest Leg of the Atlanta Expressway; thence in a northwesternly direction along the south side of the said Northwest Expressway to its intersection with Peachtree Creek; thence in a westernly direction along the South side of said creek following the meanderings thereof to Moores Mill Road; thence in a southwesternly direction along the southeast side of Moores Mill Road to the intersection of Moores Mill Road with the Seaboard Airline Railway; thence in a northwesternly direction along the southwest side of the right of way of the Seaboard Railway to the point where the Seaboard Airline Railway crosses the Chattahoochee River and the Fulton County-Cobb County boundary; thence in a southwesternly direction along the Fulton County-Cobb County boundary and

the Chattahoochee River to a point in land lot 263 of the 17th district of Fulton County, Georgia, where the Southern Railway crosses the Chattahoochee River and said boundary; thence in a southeasterly direction along the northeast side of the right of way of the Southern Railway to the intersection of said railroad with Marietta Road; thence in a southerly direction along the east side of Marietta Road to the intersection with Perry Boulevard; thence southeasterly along the north side of Perry Boulevard to its intersection with West Marietta Street; and continuing along the north side of West Marietta Street in a southeasterly direction to its intersection with Ashby Street; thence southerly along the east side of Ashby Street to the intersection of Ashby Street and Gordon Street; thence east along the north side of Gordon Street to the intersection of Gordon Street with Glenn Street and the Central of Georgia Railway and the point of beginning.

40. That portion of Fulton County, more particularly described as follows:

Beginning on the eastern border of land lot 10 of the 17th district of Fulton County, Georgia, which border is also the Fulton-DeKalb County boundary line, at a point where the Southern Railway intersects with the said eastern border of the said land lot 10 and the Fulton County-DeKalb County boundary; thence in a southerly direction following the northwest boundary of Senatorial District 37, along the northwest side of the Southern Railway right of way, and continuing to follow said right of way along the border of Senatorial District 39 to a point where said right of way intersects the North West Leg of the Atlanta Expressway; thence continuing along the north side of the Northwest Leg of the said expressway to its intersection with Peachtree Creek, and thence in a westwardly direction on the north side of Peachtree Creek continuing to follow the north boundary of Senatorial District 39, following the

meanderings of said creek to Moores Mill Road; thence continuing to follow the boundary of Senatorial District 39 along the northwest side of Moores Mill Road to the Seaboard Airline Railroad; thence northwestwardly along the northeast side of said railroad right of way to the Chattahoochee River and the Fulton County-Cobb County boundary; thence in a northerly direction along the Fulton County-Cobb County boundary and the Chattahoochee River so long as the said boundary follows the meanderings of said river; thence continuing to follow the meanderings of the Fulton County-Cobb County boundary line to the intersection thereof with the Fulton County-Cherokee County boundary; thence in a northerly direction following the meanderings of the Cherokee-Fulton County boundary line to a point where said boundary line turns eastwardly; thence eastwardly along the Cherokee-Fulton County boundary line to the intersection of said boundary with the Fulton County-Forsyth County boundary line; thence southerly and thence southeasterly following the meanderings of the Fulton County-Forsyth County boundary line to the intersection of said boundary with the Fulton County-Gwinnett County boundary line; thence southwestwardly following the meanderings of the Fulton County-Gwinnett County boundary line to the intersection of said boundary with the Fulton County-DeKalb County boundary lines; thence in a westwardly direction, and thence in a southerly direction, following the meanderings of the Fulton County-DeKalb County line to its intersection with the Southern Railway right of way and the point of beginning.

41. That portion of DeKalb County, more particularly described as follows:

All that part of DeKalb County lying and being in Militia Districts numbered 524, 686, 1416, 572, 1327, 1045, 637, 1398, 563, 683, 487, as presently laid out.



42. That portion of DeKalb County, more particularly described as follows:

All that part of DeKalb County lying and being in Militia District numbered 531, as presently laid out.

43. That portion of DeKalb County more particularly described as follows:

All that part of DeKalb County lying and being in Militia Districts numbered 1379, 1586, 1666, 1342, 536, 1448, as presently laid out.

44. Clayton, Henry, Rockdale

45. Putnam, Jasper, Morgan, Newton and Walton

46. Oconee, Clark, Madison and Oglethorpe

47. Stephens, Franklin, Hart and Elbert

48. Banks, Jackson, Barrow and Gwinnett

49. Dawson, Forsyth, Hall and Lumpkin

50. Fannin, Gilmer, Habersham, Pickens, Rabun, Towns, Union and White.

51. Bartow, Cherokee and Gordon

52. Floyd County

53. Chattooga, Dade and Walker

53. Catoosa, Murray and Whitfield

Each Senator must be a resident of his own Senatorial District and shall be elected by the voters of his own District, except that the Senators from those Senatorial Districts consisting of less than one county shall be elected

by all the voters of the county in which such Senatorial District is located.<sup>1</sup>

Any person offering as a candidate for Senator in a District composed of one county or less, must have been a resident and a registered voter of such District for the twelve (12) months immediately preceding the date of the general election. Any person offering as a candidate for Senator in a District composed of more than one county, must have been a resident and a registered voter of the particular county in said District from which he offers as a candidate for the twelve (12) months immediately preceding the date of the general election.

Section 10. It shall be the duty of the General Assembly after each federal decennial census to reapportion the Senate if necessary to conform to changes in population. Entire counties may be combined to form Senatorial Districts but a part of a county may not be combined with all or any part of another county or counties to form a Senatorial District. Each county in a Senatorial District composed of more than one county must adjoin at least one other county in the same Senatorial District and Districts shall be arranged so as to be as compact as practicable. There may be more than one Senatorial District within a county.

Section 11. The provisions of section 3 of this Act shall apply only to the members of the Senate elected for the 1963-64 term. The provisions of section 3 shall supersede all other provisions of law in conflict therewith, including any provisions of other sections of this Act. The

<sup>1</sup> In *Finch v. Gray*, Case No. A 96441 in the Superior Court of Fulton County, Georgia, the Court has issued Orders, dated October 20 and 30, 1962, nullifying this exception by requiring that senatorial candidates be nominated and elected only by the voters residing within their respective districts, and enjoining county-wide voting for senatorial candidates in multi-districted counties.

provisions of section 3 shall expire on the date of the convening of the General Assembly in January, 1963. All other laws governing primaries and elections for members of the Senate not inconsistent therewith shall apply to the special primaries and elections provided for in said section.

Section 12. Nothing herein shall be construed as an expression of the intention by the General Assembly of Georgia to apportion both Houses thereof according to population, rather, the General Assembly hereby expressly declares its intention to be that the Senate of Georgia be apportioned on population and that the House be apportioned on geography.

Section 13.<sup>43</sup> All laws and parts of laws in conflict with this Action are hereby repealed.

Approved October 5, 1962.



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IN THE  
**SUPREME COURT OF THE UNITED STATES.**

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OCTOBER TERM, 1963.

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Number 22.

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JAMES P. WESBERRY, JR., and CANDLER  
CRIM, JR.,  
Appellants,

v.

CARL E. SANDERS, as Governor of the  
State of Georgia,  
and

BEN W. FORTSON, JR., as Secretary of State  
of the State of Georgia,  
Appellees.

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On Appeal from the United States District Court  
for the Northern District of Georgia.

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**BRIEF FOR THE APPELLANTS.**

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**OPINION BELOW.**

The opinion of the United States District Court for the Northern District of Georgia is reported in **Wesberry v. Vandiver**, 206 F. Supp. 276 (N. D. Ga. 1962) and is printed at pages 35 through 55 of the Record.

### **JURISDICTION.**

This action was brought pursuant to Title 42, United States Code, Section 1983, by qualified Georgia voters to have declared unconstitutional and to enjoin the enforcement of the Georgia Congressional-District Reapportionment Act of 1931, which infringes their right to vote for members of the House of Representatives, in violation of the rights, privileges and immunities conferred by the Constitution and laws of the United States. The jurisdiction of the District Court was predicated upon Title 28, United States Code, Section 1343 (3) and (4), and Sections 2201 and 2281. The judgment of the District Court was entered on June 20, 1962 (R. 51) and the notice of appeal was filed in that Court on August 17, 1962 (R. 55).

The jurisdictional statement was filed in this Court on October 12, 1962, and probable jurisdiction was noted on June 10, 1963 (R. 56). **Wesberry v. Sanders**, 373 U. S. 802, 83 S. Ct. 1691, 10 L. Ed. 2d 1029 (1963). The jurisdiction of the Supreme Court to review this decision by appeal is conferred by Title 28, United States Code, Sections 1253 and 2101 (b).

### **QUESTIONS PRESENTED.**

Whether an apportionment of congressional districts which arbitrarily deprives the Appellants of more than one-half of their effective voice in federal elections for the Representatives in Congress violates the Equal Protection Clause of the Fourteenth Amendment.

Whether a congressional apportionment which deprives the Appellants of a majority of their representation in the House of Representatives deprive them of those privileges and immunities of national citizenship which are secured by the Fourteenth Amendment.

Whether the federal courts have jurisdiction of this action to enjoin the election of members of the House of Representatives under a grossly discriminatory apportionment of congressional districts which is violative of the Constitution.

**STATUTE INVOLVED.**

The Georgia Congressional District Reapportionment Act of 1931, Ga. Laws 1931, p. 46; Ga. Code § 34-2301 (1933), is set forth in Appendix A.



### STATEMENT.

This action was brought in the United States District Court for the Northern District of Georgia by the Appellants, citizens of the United States, each of whom is a resident of Fulton County, Georgia, a registered voter of the State, and qualified to vote in elections of members of the House of Representatives from the Fifth Congressional District.

The Defendants are the Governor<sup>1</sup> and the Secretary of State of Georgia, who are responsible for the preparation of the ballots, the certification of candidates, the counting of returns, and the certification of Representatives-elect in elections for members of the House of Representatives of the Congress of the United States.

The complaint challenges the validity of the Georgia Congressional District Reapportionment Act of 1931 on grounds that it infringes Appellants' right to a full and equal ballot in elections for members of the House of Representatives, in violation of the rights, privileges and immunities secured by the Constitution and laws of the United States, 42 U. S. C., § 1983.

Under the reapportionment of the House of Representatives which followed the census of 1930, the number of congressional seats to which Georgia was entitled in the House of Representatives was reduced from twelve to ten Representatives. In 1931 the General Assembly reapportioned the State into ten congressional districts varying in population from 218,496 in the Ninth District to 296,112 in the Fifth District (Metropolitan Atlanta). By 1940 the disparity between the Fifth and Ninth Congressional Districts

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<sup>1</sup> On January 15, 1963, Carl E. Sanders succeeded S. Ernest Vandiver as Governor of the State of Georgia and was substituted as a party defendant in accordance with Rule 48 (3) of the Rules of this Court.

had climbed to 252,244; by 1950 to 472,234, and by 1960 it had reached 551,526 people; yet the General Assembly has made no attempt to correct this discrimination. The following charts are illustrative of the disparities resulting from the perpetuation of the 1931 apportionment.

Georgia Congressional Districts 1932.\*

| District      | Population<br>2,891,763 | Deviation<br>From Mean<br>(289,176) | Value of<br>Vote<br>(Largest = 1) |
|---------------|-------------------------|-------------------------------------|-----------------------------------|
| First .....   | 328,214                 | 1.13                                | 1.21                              |
| Second .....  | 263,606                 | .91                                 | 1.50                              |
| Third .....   | 339,870                 | 1.18                                | 1.17                              |
| Fourth .....  | 261,234                 | .90                                 | 1.52                              |
| Fifth .....   | 395,112                 | 1.37                                | 1.00                              |
| Sixth .....   | 281,437                 | .97                                 | 1.41                              |
| Seventh ..... | 271,680                 | .94                                 | 1.46                              |
| Eighth .....  | 241,847                 | .84                                 | 1.64                              |
| Ninth .....   | 218,496                 | .76                                 | 1.81                              |
| Tenth .....   | 289,267                 | 1.00                                | 1.37                              |

Georgia Congressional Districts 1962.\*\*

| District      | Population<br>3,943,116 | Deviation<br>From Mean<br>(394,311) | Value of<br>Vote<br>(Largest = 1) |
|---------------|-------------------------|-------------------------------------|-----------------------------------|
| First .....   | 379,933                 | .96                                 | 2.17                              |
| Second .....  | 301,123                 | .76                                 | 2.74                              |
| Third .....   | 422,198                 | 1.07                                | 1.95                              |
| Fourth .....  | 323,489                 | .82                                 | 2.55                              |
| Fifth .....   | 823,680                 | 2.09                                | 1.00                              |
| Sixth .....   | 330,235                 | .84                                 | 2.49                              |
| Seventh ..... | 450,740                 | 1.14                                | 1.83                              |
| Eighth .....  | 291,185                 | .74                                 | 2.83                              |
| Ninth .....   | 272,154                 | .69                                 | 3.03                              |
| Tenth .....   | 348,379                 | .88                                 | 2.36                              |

\* 1930 Census.

\*\* 1960 Census; R. 39.

By 1962, after thirty years without reapportionment, the population of the Fifth District had soared to 823,680, to become the second largest congressional district in the United States (R. 79). The more than 820,000 people residing in Fulton, DeKalb, and Rockdale Counties, comprising the Fifth Congressional District, constitute more than 20% of Georgia's entire population and yet possess only one-tenth of its representation in Congress. Although the Fifth District has more than 2.7 times the population of the Second District, 2.8 times that of the Eighth District, and more than 3 times that of the Ninth Congressional District, each district sends one Representative to the House.

Based upon an extensive analysis of these facts, which were undisputed, the three-judge district court found that:

"It is clear by any standard however that the population of the Fifth District is grossly out of balance with that of the other nine congressional districts of Georgia . . . [R. 40; 206 F. Supp. 276, 279-80].

"It is readily apparent from these undisputed facts that the plaintiffs, not unlike many millions of other citizens throughout the Republic, are being deprived of equal treatment arising from the excess in population of their congressional district as compared with that of the other districts in Georgia [R. 44; 206 F. Supp. 276, 281].

"In our view, the statute here when enacted reflected a rational state policy to set up the congressional districts in Georgia with some reasonable relation to population. On the other hand, it now reflects a system which has become arbitrary through inaction when considered in the light of the present



population of the Fifth District and as measured by any conceivable reasonable 'standard' [R. 45; 206 F. Supp. 276, 282]:

Despite these findings of fact, however, the majority of the court concluded that the apportionment lacked the invidiousness proscribed by the Constitution, and, accordingly, dismissed the complaint [R. 45; 206 F. Supp. 276, 282].<sup>2</sup>

At the 1963 session of the Georgia General Assembly a bill<sup>3</sup> was introduced to reapportion Georgia's ten congressional districts on a more equitable basis. It was referred to the Rules Committee of the Senate, where it died without report. Subsequently, a resolution<sup>4</sup> calling for the creation of a joint Senate-House study committee was passed by the Senate, but was reported unfavorably in the House, ending all attempts at reapportionment at that session of the General Assembly.

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<sup>2</sup> Chief Judge Elbert P. Tuttle concurred in part and dissented in part from the opinion of the majority (R. 51).

<sup>3</sup> Senate Bill No. 101.

<sup>4</sup> Senate Resolution No. 56.

## SUMMARY OF ARGUMENT.

The right of the people to equality of representation in the House of Representatives constitutes a fundamental presupposition upon which that body which Mason proudly characterized as the "grand depository of democratic principle" is founded. Indeed, it is in the House of Representatives that the Framers of the Constitution sought to epitomize the equalitarian principles of the Declaration of Independence by affording representation to "the People". By insuring equality of political participation to its people, the government secures not only the strength of popular support, but affords to each citizen the security of an attentive consideration of his rights by those in power. Here lies the genius of representative government. *Rice v. Elmore*, 165 F. 2d 387, 392 (4 Cir., 1947). However, the government is responsive only to those upon whom its power depends. The disenfranchisement of large segments of the people due to the failure of the States to properly reapportion congressional districts threatens to undermine these basic principles upon which the structure of government rests.

The principle of equality so eloquently declared in the Declaration of Independence has pervaded every aspect of our government from the time of its inception. This principle is particularly applicable to the election of Representatives in the popular house of the National Legislature, for by the clear implication of Article I, Section 2 and Section 2 of the Fourteenth Amendment, Representatives in Congress must be apportioned equally among the people within each of the several States according to their numbers. *Colegrove v. Green*, 328 U. S. 549, at 570, 66 S. Ct. 1198, 90 L. Ed. 1432 (1946). Despite these constitutional imperatives, Georgia has perpetuated a system of congressional districts which the District.

Court found to be "grossly out of balance" and "arbitrary as measured by any conceivable reasonable standard." These disparities between congressional districts which deprive the Appellants of more than one-half their representation in Congress are invidiously discriminatory and contravene the Equal Protection Clause of the Fourteenth Amendment.

The right of the Appellants as electors qualified under the laws of the State of Georgia to full and equal representation in the House of Representatives is a privilege and immunity of national citizenship which is secured against invasion by the State by the Privileges and Immunities Clause of the Fourteenth Amendment. **Twining v. State of New Jersey**, 211 U. S. 78, 97, 29 S. Ct. 14, 19, 53 L. Ed. 97 (1908). The right of a qualified citizen to participate in the selection of national officers is inherent in the nature of our government as one republican in form, and characterizes the relationship which exists between a citizen and the general government. It is the Constitution which creates the right to vote for members of Congress. It establishes the office, declares that it shall be elective and adopts as its criteria the qualifications prescribed by the States for the election of the most numerous branch of their legislatures. This right includes more than the right to merely mark a ballot and deposit it in a box. It includes the right to have that ballot counted. **United States v. Classic**, 313 U. S. 299, 61 S. Ct. 1031, 85 L. Ed. 1368 (1941). The right of the people to choose includes the right to have their ballots counted at their full value undiminished by fraudulent ballots which may be cast in the same election, to the end that an individual voter will not be deprived of his full measure of participation in the selection of Representatives. **United States v. Saylor**, 322 U. S. 285, 64 S. Ct. 1101, 88 L. Ed. 1341 (1944). Yet, the right to



cast a ballot of full value is of little consequence if a State may, by the manipulation of congressional districts, deprive the ballot of all practical significance. Thus, it is apparent that the right of the people to vote for members of Congress and the right to full representation in Congress by districts of equal size are complementary in the constitutional structure. The protection of each is essential to the fulfillment of the other to the end that the government will remain responsive to the will of the people. For this reason, both are within the protection of the Privileges and Immunities Clause of the Fourteenth Amendment.

The jurisdiction of the federal courts over actions involving the apportionment of congressional districts is well established in the decisions of this Court. **Colegrove v. Green**, 328 U. S. 549, 66 S. Ct. 1198, 90 L. Ed. 1432 (1946); **Smiley v. Holm**, 285 U. S. 355, 52 S. Ct. 397, 76 L. Ed. 795 (1932). Although Congress is authorized to alter the regulations governing congressional elections enacted by the State, this power is not exclusive of the jurisdiction of the federal courts. Rather, the powers of the two branches of government may be exercised concurrently. Thus, in **Smiley v. Holm**, 285 U. S. 355, 52 S. Ct. 397, 76 L. Ed. 795 (1932), this Court reviewed and held invalid the apportionment of Minnesota's nine congressional districts. In an opinion by Mr. Justice Hughes, the election of Representatives under the invalid apportionment was enjoined and all nine Representatives were ordered elected state-wide on an at-large basis, if the state legislature failed to reapportion prior to the election.

There is here no room for the application for the presumption of constitutionality which usually appertains to state legislative action. The disparities in population between congressional districts are not the product of a ra-

tional legislative judgment. Rather, they are the result of the perpetuation of the apportionment of 1931 long after its basis has been eroded away by the massive shifts in population which have occurred since its enactment and which make irrational its continued application to elections of congressmen. **Nashville, C. & St. L. Ry. v. Walters**, 294 U. S. 405, 415, 55 S. Ct. 486, 79 L. Ed. 949 (1935). The frequency and magnitude of the inequalities between congressional districts, as well as the manner of their creation, admits of no rational legislative policy whatever. **Baker v. Carr**, 369 U. S. 186, 254, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962). This encroachment upon the fundamental rights of the Appellants may be sustained only upon a strong showing by the State of some compelling interest, paramount to that of the Appellants, which demands the sacrifice of their rights to an equal voice in the selection of representatives. **Bates v. City of Little Rock**, 361 U. S. 516, 524, 80 S. Ct. 412, 4 L. Ed. 2d 480 (1960). This the Defendants have not even attempted. Thus, the irrational and invidious apportionment of Georgia's ten congressional districts must be stricken as in contravention of the Fourteenth Amendment.

## ARGUMENT.

### I. The Right of the People to an Equal Voice in the Selection of Representatives in Congress Is Fundamental in the Structure of the House of Representatives.

"In a free representative government nothing is more fundamental than the right of the people, through their appointed servants, to govern themselves in accordance with their own will . . ." **Twining v. New Jersey**, 211 U. S. 78, 106, 29 S. Ct. 14, 53 L. Ed. 97 (1908). It is this principle of political equality, antedating the Constitution, which has characterized our republic from its inception and which pervades all of our political institutions.<sup>5</sup> It was this philosophy which Jefferson eloquently expressed in our first national document, the Declaration of Independence:

"We hold these truths to be self-evident that all men are created equal; that they are endowed by their Creator, with certain inalienable rights; that among these are life, liberty and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and institute new governments. . . ."<sup>6</sup>

<sup>5</sup> 2 Journals of Congress 229 (1776). "Equal representation", wrote Jefferson to King on November 19, 1819, "is so fundamental a principle in a true republic that no prejudices can justify its violation because the prejudices themselves cannot be justified." Quoted from De Grazia, *General Theory of Apportionment*, 17 Law & Contemp. Prob. 257, 261 (1952).

<sup>6</sup> Declaration of Independence, 2 Journals of Congress 229, (1776). "While [the Declaration of Independence] may not have the force of organic law, or be made the basis of judicial decision



It is significant that primary among the charges against George III which incited the Revolution was that:

"He has refused to pass other laws, for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only."

Although the equality of representation of the States which existed under the Articles of Confederation was preserved in the Senate, it was in the House of Representatives that the Framers of the Constitution sought to epitomize on a national scale the equalitarian principles of the Declaration of Independence by affording representation to "the People."<sup>7</sup> Thus, in the words of George Mason, the House "was to be the grand depository of the democratic principle of the Government."<sup>8</sup> It seems to have been assumed by all the delegates to the Constitutional Convention that all qualified citizens would have an equal voice in the selection of Representatives. The

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as to the limits of right and duty, and while in all cases reference must be had to the [Constitution] the letter of which the former is the thought and the spirit, . . . it is always safe to read the letter of the Constitution in the spirit of the Declaration of Independence. No duty rests more imperatively upon the courts than enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government." *Gulf, Colorado and Santa Fe Railway Co. v. Ellis*, 165 U. S. 150, 160, 17 S. Ct. 255, 41 L. Ed. 666 (1897).

<sup>7</sup> "As to Congress, . . . it is at least tenable to conclude that representation of the relevant constituent political units, without regard to population base, is wholly taken care of in the Senate, and that the House, which is to be elected by the people *pro rata*, is to represent the popular principle fully and effectively. Surely it would not be strange to find that one part of one branch of a democratic government lives under that requirement." Black, *Inequities in Districting for Congress: Baker v. Carr and Colegrove v. Green*, 72 Yale L. J. 13, 17 (1962).

<sup>8</sup> I Farrand, *The Records of the Federal Convention of 1787*, 48 (1937).

language of Article I, Section 2 is a clear reflection of this assumption.

“The House of Representatives shall be composed of Members chosen every second Year by the People.

“Representatives . . . shall be apportioned among the several States . . . according to their respective Numbers.”

Although the delegates to the Convention expressed primary concern that Representatives should be fairly apportioned among the several states, the speeches of such prominent delegates as James Madison and Edmond Randolph provide a clear insight into the understanding of the Framers of the Constitution that the constitutional policy went even further to forbid the unequal apportionment of Representatives within a single State.

Thus, in urging the adoption of the provisions of Article I, Section 4, reserving to Congress the power to make or alter regulations prescribed by the States for the election of Senators and Representatives, Madison said:

“The necessity of a Genl. Govt. supposes that the State Legislatures will sometimes fail or refuse to consult the common interest at the expense of their local conveniency or prejudices. . . . This view of the question seems to decide that the Legislatures of the States ought not to have the uncontrolled right of regulating the times, places and manner of holding elections. These were words of great latitude. It was impossible to foresee all the abuses that might be made of the discretionary power. . . . Whenever the State Legislatures had a favorite measure to carry, they would take care so to mould their regulations as to favor the candidates they wished to succeed. Besides, the inequality of the Representation in the

Legislatures of particular States, would produce a like inequality in their representation in the Natl. Legislature, as it was presumable that the Counties having the power in the former case would secure it to themselves in the latter. . . .” (Emphasis supplied.)

And Randolph, in supporting the adoption of the provisions of Article I, § 2, cl. 3, requiring that Representatives be reapportioned following each decennial census, said:

“ . . . If equality between great & small States be inadmissible, because in that case unequal number of Constituents wd. be represented by equal number of votes; was it not equally inadmissible that a larger & more populous district of America should hereafter have less representation, than a smaller & less populous district. If a fair representation of the people be not secured, the injustice of the Govt. will shake it to its foundations. . . .” (Emphasis supplied.)

Indeed, these statements seem to have reflected the sentiments of the entire Convention, for they were undisputed. Similar statements of disapproval of inequitable apportionments were expressed in the state ratifying conventions. Lewis, *Legislative Apportionment and the Federal Court*, 71 Harv. L. Rev. 1057, 1071-73 (1958).

The understanding of the Framers that Representatives were to be apportioned equally derives strong support from *The Federalist*. Madison, in discussing the apportionment of Representatives in Number 57, said:

“[E]ach representative of the United States will be elected by five or six thousand citizens.”<sup>10</sup>

<sup>9</sup> I-Farrand, *The Records of the Federal Convention of 1787*, 579-80 (1937).

<sup>10</sup> Cooke Edition, page 388 (1961). A further indication of Madison's assumption that Representatives were to be elected by



Thus, it seems clear that the language of the Constitution conferring representation upon "the People" was intended to establish a uniform federal standard of equal popular representation in the House of Representatives which neither the States nor the Congress may vary. As Mr. Justice Douglas said in **MacDougall v. Green**, 335 U. S. 281, 290, 69 S. Ct. 1, 93 L. Ed. 3. (1948) (dissenting opinion):

"The theme of the Constitution is equality among citizens in the exercise of their political rights. The notion that one group can be granted greater voting strength than another is hostile to our standards for popular representative government."

**A. The Gross Inequalities Between Georgia's Congressional Districts Which Deprive Appellants of More Than One-Half of Their Effective Voice in the Selection of Representatives in Congress Violates the Equal Protection Clause of the Fourteenth Amendment.**

The principle of equality so eloquently declared in the Declaration of Independence has pervaded every aspect of our governmental structure from the time of its inception. **United States v. Cruikshank**, 92 U. S. (2 Otto) 542, 555, 23 L. Ed. 588 (1874). Always implicit in the concept of due process of law [**Bolling v. Sharpe**, 347 U. S. 497, 74 S. Ct. 693, 98 L. Ed. 884 (1954); **Twining v. New Jersey**, 211 U. S. 78, 29 S. Ct. 14, 53 L. Ed. 97 (1908)], the

districts of equal size in his discussion of the probable method of election in Pennsylvania:

"Some of her counties which elect her State representatives, are almost as large as her districts will be by which her Federal Representatives will be elected. The City of Philadelphia is supposed to contain between fifty and sixty thousand souls. It will therefore form nearly two districts for the choice of Federal Representatives" (Emphasis supplied).

*Id.* page 389; see Hacker, *Congressional Districting, The Issue of Equal Representation*, 11 (1963).

constitutional guaranty of equality was reaffirmed by the Fourteenth Amendment. It cannot now be doubted that the protection of the Equal Protection Clause extends to political rights. **Gray v. Sanders**, 372 U. S. 368, 83 S. Ct. 801, 9 L. Ed. 2d 821 (1963); **Baker v. Carr**, 369 U. S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962); **Gomillion v. Lightfoot**, 364 U. S. 339, 349, 81 S. Ct. 125, 5 L. Ed. 2d 110 (1960). "Whatever else the framers [of the Fourteenth Amendment] sought to achieve, it is clear that the matter of primary concern was the establishment of equality in the enjoyment of basic civil and political rights . . ." **Shelly v. Kraemer**, 334 U. S. 1, 23, 68 S. Ct. 836, 92 L. Ed. 1161 (1948).

These principles are particularly applicable to the election of representatives to the popular house of the National Legislature, for by the clear implication of Article I, § 2 and Section 2 of the Fourteenth Amendment, Representatives in Congress must be apportioned equally among the people within each state. As Mr. Justice Black said in **Colegrove v. Green**, 328 U. S. 549, at 570, 66 S. Ct. 1198, 90 L. Ed. 1432 (1946) (dissenting opinion):

"The purpose of this requirement is obvious: It is to make the votes of the citizens of the several states equally effective in the selection of members of Congress. It was intended to make illegal a nation-wide 'rotten borough' system as between the States. The policy behind it is broader than that. It prohibits as well Congressional 'rotten boroughs' within the States, such as the ones here involved."

Despite these clear constitutional imperatives, Georgia, by legislative lethargy, has perpetuated a system of congressional districts which deprives the Appellants, and all other qualified residents of the Fifth District, of one-half of the representation in the House of Representatives to which they are entitled. Under the present apportionment,

with the exception of one possible combination (the Third and Seventh Districts), the Fifth Congressional District is larger than any two other districts combined. Thus, the 563,000 residents of the Eighth and Ninth Districts control twice the number of congressmen as do the 823,000 residents of the Fifth District. In the election of congressmen, the ballots of individual voters residing in the Second District have more than 2.7 times the effective weight of the ballots cast by each of the Appellants in the Fifth District; those cast in the Eighth District are worth 2.8 times those of the Appellants; and those cast in the Ninth District are worth more than 3 times those cast by the Appellants. These disparities are invidiously discriminatory and contravene the guaranty of Equal Protection Clause of the Fourteenth Amendment. Cf. **Gray v. Sanders**, 372 U. S. 368, 83 S. Ct. 801, 9 L. Ed. 2d 821 (1963); **Baker v. Carr**, 369 U. S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962). Indeed, the District Court found the Georgia apportionment of congressional districts to be "grossly out of balance" (R. 40) and "arbitrary . . . when measured by any conceivable reasonable standard" (R. 45).

Despite these findings, a majority of that Court refused to hold the apportionment to be invalid under the Equal Protection Clause of the Fourteenth Amendment. This conclusion is based upon fallacious and untenable proposition that a classification of citizens which is arbitrary and without rational basis may nevertheless fail to amount to an invidious discrimination which is prohibited by the Fourteenth Amendment. As this Court's decision in **Morey v. Doud**, 354 U. S. 457, 463, 77 S. Ct. 1344, 1 L. Ed. 2d 1485 (1957), makes manifestly clear these terms are substantially synonymous:

"The equal protection clause of the Fourteenth Amendment does not take from the State the power



to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is **without any reasonable basis**, and therefore is **purely arbitrary**." (Emphasis supplied.)

See **Quaker City Cab Co. v. Pennsylvania**, 277 U. S. 389, 406, 48 S. Ct. 553, 72 L. Ed. 927 (1928). Accepting the findings of the court below, it is indisputable that the Equal Protection Clause is violated by the apportionment.

These great disparities in population between congressional districts are not the product of a rational legislative judgment. Instead, they are the result of a legislative lethargy which has perpetuated the apportionment of 1931, despite the fact that its basis has been eroded away by the massive shifts in population which have occurred since its adoption. Thus even if the apportionment were valid in the circumstances of its enactment, the enormous changes wrought by the massive population shifts in the 30 years which have intervened since its enactment make irrational its continued application to the election of congressmen. **Nashville C. & St. L. Ry. v. Walters**, 294 U. S. 405, 415, 55 S. Ct. 486, 79 L. Ed. 949 (1935).

These factors make clear that there is here no room for the application of the presumption of constitutionality which usually appertains to state legislative action. As Mr. Justice Stone implied in **United States v. Carolene Products Co.**, 304 U. S. 144, 152, 58 S. Ct. 778, 82 L. Ed. 1234 (1938):

"Legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation."

In this case, as in **Baker v. Carr**, the frequency and magnitude of the inequalities between congressional districts, as well as the manner of their creation, admits of no rational legislative policy whatever.<sup>11</sup> This encroachment upon the fundamental rights of the Appellants may be sustained only upon a strong showing by the State of a paramount and compelling interest which demands that their right to an equal voice in the selection of congressmen be subordinated in order that voters residing in other districts may be given a greater share in government. **Bates v. City of Little Rock**, 361 U. S. 516, 524, 80 S. Ct. 412, 4 L. Ed. 2d 490 (1960); **NAACP v. Alabama**, 357 U. S. 449, 460-65, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (1957). This the Defendants have not even attempted. The irrational and invidious inequalities imposed by the present apportionment of congressional districts must be stricken as in contravention of the Equal Protection Clause of the Fourteenth Amendment.

The Constitutional standards of equality and rationality applicable to federal elections for Representatives in Congress are not necessarily identical to those which govern the States in the apportionment of their own legislatures. In apportioning their own legislatures, the States may have a broader range of discretion which may permit some departure from the principle of equal popular representation, thereby affording some measure of representation based on other factors. However, diverse state theories of representation can have no application in federal elections for national officers. In conferring representation upon "the People," the Constitution establishes a uniform federal standard of equal popular representation in the House of Representatives which neither the States nor Congress may vary.

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<sup>11</sup> 369 U. S. 186, 254, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962), concurring opinion of Mr. Justice Clark.

Of course, abstract mathematical equality between congressional districts is not required. The Constitution requires only that the States make a conscientious attempt to achieve substantial equality of numbers within each district.<sup>12</sup> When measured by this standard, it is clear that the present apportionment of Georgia's ten congressional districts is clearly violative of the Fourteenth Amendment.

**B. The Right to a Full Voice in the Selection of Representatives in Congress Is a Privilege and Immunity of National Citizenship Which Is Violated by the Disproportionate Apportionment of Georgia's Congressional Districts.**

The right of the Appellants as electors qualified under the laws of the State of Georgia to full and equal representation in the House of Representatives is a privilege and immunity of national citizenship which is secured against invasion by the State by the Fourteenth Amendment. **United States v. Classic**, 313 U. S. 299, 61 S. Ct. 1031, 85 L. Ed. 1368 (1941); **Twining v. New Jersey**, 211 U. S. 78, 97, 29 S. Ct. 14, 53 L. Ed. 97 (1908); **Wiley v. Sinkler**, 179 U. S. 58, 21 S. Ct. 17, 45 L. Ed. 84 (1900).

This Court, in **Twining v. New Jersey**, 211 U. S. 78, 97, 29 S. Ct. 14, 53 L. Ed. 97 (1908), established the controlling definition of those rights which are within the protection of the Privilege and Immunities Clause of the Fourteenth Amendment when it said:

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<sup>12</sup> A proposal has been made that, if this Court should require reapportionment, Georgia's most populous county, Fulton, should be made a single congressional district having a population 40% larger than state-wide average. Since Fulton County has already been subdivided into seven state senatorial districts, this proposal would hardly seem justified and would violate the basic constitutional requirement of substantial equality between districts.



"Privileges and immunities of citizens of the United States . . . are only such as arise out of the nature and essential character of the National Government or are specifically granted or secured to all citizens or persons by the Constitution . . .

"Thus, among the rights and privileges of the national citizenship recognized by this court [is] the right to vote for national officers" (Emphasis supplied).

The right of a qualified citizen to participate in the selection of national officers is inherent in the nature of our government as one republican in form, and characterizes the relationship which exists between a citizen and the general government. The fundamental nature of this right was well described by Judge Parker in *Rice v. Elmore*, 165 F. 2d 387, 392 (4 Cir., 1947), in which he said:

"An essential feature of our form of government is the right of the citizen to participate in the governmental process. The political philosophy of the Declaration of Independence is that governments derive their just powers from the consent of the governed; and the right to a voice in the selection of officers of government on the part of all citizens is important, not only as a means of insuring that government shall have the strength of popular support, but also as a means of securing to the individual citizen proper consideration of his rights by those in power."

It is the Constitution which creates the right to vote for members of Congress. U. S. Const., Article I, § 2; *Wiley v. Sinkler*, 179 U. S. 58, 21 S. Ct. 17, 45 L. Ed. 84 (1900).<sup>13</sup>

<sup>13</sup> Although a few cases have mistakenly suggested that the right to vote for members of Congress is not a privilege and immunity of national citizenship but merely a privilege derived from the

It establishes the office, declares that it shall be elective and adopts as its criteria the qualifications prescribed by the states for the election of the most numerous branch of their legislatures. **Ex parte Yarbrough**, 110 U. S. 651, 662-663, 4 S. Ct. 152, 28 L. Ed. 274 (1884). It is the basic philosophy of the Constitution that every qualified elector shall have a right to a full and equal share in the selection of members of the lower house of the National Legislature. This right is expressly secured against malapportionment of Representatives among the several states by Article I, Section 2, and by Section 2 of the Fourteenth Amendment, which require that Representatives be apportioned among the several states according to their numbers. However, the constitutional policy securing to each citizen a full measure of legislative representation extends to guarantee the right against deprivations which may occur within a single state as well as those which may occur among the several states. **Colegrove v. Green**, 328 U. S. 549, 570, 66 S. Ct. 1198, 90 L. Ed. 1432 (1946), dissenting opinion.

The power to regulate the times, places and manner of election of members of Congress delegated by the Constitution to the States may not be exercised without regard to the limitations imposed by other sections of the Constitution. This power is, as Mr. Justice Black recog-

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States [See, e. g., *Minor v. Happersett*, 88 U. S. (21 Wall.) 162, 22 L. Ed. 627 (1872)], this proposition "was sharply rejected in *United States v. Classic*, 313 U. S. 299, 314-15, 61 S. Ct. 1031, 85 L. Ed. 1368 (1941), in which the Court said:

"The right of the people to choose . . . is a right established and guaranteed by the Constitution and hence is one secured by it to those citizens and inhabitants of the states entitled to exercise the right . . . While in a loose sense, the right to vote for representatives in Congress is sometimes spoken of as a right derived from the states [citations omitted] . . . this statement is true only in the sense that the states are authorized by the Constitution to legislate on the subject as provided by § 2 of Art. I . . ."

nized, "not to formulate policy, but rather to implement the policy laid down in the Constitution, that, so far as feasible, votes be given equally effective weight." **Colegrove v. Green**, 328 U. S. 549, 571, 66 S. Ct. 1198, 90 L. Ed. 1432 (1946), dissenting opinion.

This Court has been vigilant to protect the right of qualified citizens to participate in the selection of national officers. The right to vote conferred by Article I, § 2 has been held to include more than the right to merely mark a ballot and deposit it in a box. It includes the right to have the ballot counted. **United States v. Classic**, 313 U. S. 299, 61 S. Ct. 1031, 85 L. Ed. 1368 (1941); **United States v. Mosley**, 238 U. S. 383, 35 S. Ct. 904, 59 L. Ed. 1355 (1915). The right of the people to choose includes the right to have their ballots counted at their full value, undiminished by fraudulent ballots which may be cast in the same election, to the end that an individual voter will not be deprived of his full measure of participation in the selection of Representatives. **United States v. Saylor**, 322 U. S. 385, 64 S. Ct. 1101, 88 L. Ed. 1341 (1944).

Yet, the right to cast a ballot of full value is of little consequence if a state may, by the manipulation of congressional districts, deprive the ballot of all practical significance. If Georgia may allocate nine of its Representatives to the 270,000 residents of the Ninth Congressional District, while permitting the remaining three and one-half million citizens to elect only a single Representative, the government would cease to be responsive to the will of the people and to subserve those ends for which free governments are instituted.

"[I]t is the experience of history that the exclusion of any group of men from power is, sooner or later, their exclusion from the benefits of power. The will of the State is always operated by a government in terms of the wants of those upon whom that gov-

ernment depends for the refreshment of its authority . . . .

"[N]o philosophy of politics can seriously claim to satisfy the demands of the individual unless it bases itself upon a recognition that citizens are equally entitled to the satisfaction of their desires. And the only way in which their desires can affect the will of the state with continuous emphasis is when the government of the state is compelled, by constitutional principle, to take them into definite account."<sup>14</sup>

Thus, it is apparent that the right of the people to vote for members of Congress and the right to full representation in Congress by congressional districts of approximately equal size are, by their nature, complementary in the constitutional structure. The protection of each is essential to the fulfillment of the other to the end that the government will remain responsive to the will of the people. For this reason, both are within the protection of the Privileges and Immunities Clause of the Fourteenth Amendment.

## **II. The Jurisdiction of the Federal Courts to Determine Constitutional Questions in Cases Involving the Apportionment of Congressional Districts Is Well Established in the Decisions of This Court.**

### **A. The Standing of the Appellants to Maintain This Action Challenging the Validity of the Apportionment of Congressional Districts Which Deprives Them of Their Right to Equal Representation in the House of Representatives Is Beyond Dispute.**

This action was brought by the Appellants as residents of Fulton County who are qualified to vote in elections for members of Congress from Georgia's Fifth Congress-

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<sup>14</sup> Laski, *An Introduction to Politics*, 37-38 (1931).



sional District. They seek to prevent the dilution of the effective weight of their individual ballots and the impairment of their representation in the House of Representatives under an arbitrary and irrational apportionment of congressional districts which deprives the Appellants and other residents of the Fifth Congressional District of more than one-half of their representation in Congress. Thus, it is clear that the Appellants have "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentations of issues upon which the court so largely depends for illumination of difficult constitutional questions." **Baker v. Carr**, 369 U. S. 186, 204, 82 S. Ct. 691, 703, 7 L. Ed. 2d 663 (1962).

Indeed, so well established is the right of a qualified individual voter to maintain such an action, that the question is now beyond dispute. **Gray v. Sanders**, 372 U. S. 368, 83 S. Ct. 801, 9 L. Ed. 2d 821 (1963); **Baker v. Carr**, 369 U. S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962); **Colegrove v. Green**, 328 U. S. 549, 66 S. Ct. 1198, 90 L. Ed. 1432 (1945); **Wood v. Broom**, 287 U. S. 1, 53 S. Ct. 1, 77 L. Ed. 131 (1932); **Smiley v. Holm**, 285 U. S. 355, 52 S. Ct. 397, 76 L. Ed. 795 (1932); compare **Leser v. Garnett**, 258 U. S. 130, 42 S. Ct. 217, 66 L. Ed. 505 (1922), and **Fairchild v. Hughes**, 258 U. S. 126, 42 S. Ct. 274, 66 L. Ed. 499 (1922); **Hawke v. Smith** (No. 2), 253 U. S. 231, 40 S. Ct. 498, 64 L. Ed. 877 (1920).

**B. This Action Against the Governor of Georgia and the Secretary of State Is Not an Unconsented Suit Against the State Which Is Forbidden by the Eleventh Amendment.**

Although the defendants, Governor and Secretary of State of Georgia, have been brought before this Court because they are officers of the State of Georgia, this is not

an unconsented suit against the State forbidden by the Eleventh Amendment. This action is not one to compel the exercise of official powers by state officers, of which the federal courts are without jurisdiction, but one to enjoin the unconstitutional individual acts of state officials which the State is powerless to authorize. See **Georgia Railroad & Banking Co. v. Redwine**, 342 U. S. 299, 72 S. Ct. 321, 96 L. Ed. 335 (1952); **Ex parte Young**, 209 U. S. 123, 28 S. Ct. 441, 52 L. Ed. 714 (1908). Thus, the Eleventh Amendment is not an obstacle to the maintenance of this action.

**C. The Power of Congress Under Article I, Section 4 to Make or Alter Regulations Affecting Elections of Representatives and That of the House, Under Article I, Section 4, to Judge the Qualifications and Elections of its Members, Is Not Exclusive of the Jurisdiction of the Federal Courts to Determine Under Appropriate Constitutional Standards, the Validity of an Apportionment of Congressional Districts.**

Although authority over congressional elections was, in the first instance, entrusted by the Constitution to the States, broad supervisory powers over federal elections were reserved by the Constitution to Congress. Thus, in Article I, it was provided:

“Section 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.”

“Section 5. Each House shall be the Judge of the Elections, Returns, and Qualifications of its own Members, . . .”

Nothing in the minutes of the Federal Convention justifies the assertion that the power of Congress over congressional elections was intended by the Framers to be exclusive.<sup>15</sup> As the constitutional debates make clear, Article I, Section 4, was intended only as a safeguard of the independence of the national government by withholding from the States uncontrolled power over congressional elections. Thus, the necessity for the provision was explained by James Madison in the Federal Convention:

“The necessity of a Genl. Govt. supposes that the State Legislatures will sometimes fail or refuse to consult the common interest at the expense of their local convenience or prejudice. The policy of referring the appointment of the House of Representatives to the people and not to the Legislatures of the States, supposes that the result will be somewhat influenced by the mode. This view of the question seems to decide that the Legislatures of the States ought not to have the uncontrolled right of regulating the times places & manner of holding elections. These were words of great latitude. It was impossible to foresee all the abuses that might be made of the discretionary power. Whether the electors should vote by ballot or viva voce, should assemble at this place or that place; should be divided into districts or all meet at one place, shd all vote for all the representatives; or all in a district vote for a number allotted to the district; these & many other points would depend on the Legislatures, and might materially affect the appointments. Whenever the State Legislatures had a favorite measure to carry, they

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<sup>15</sup> Paschal, *The House of Representatives: "Grand Depository of Democratic Principle"*; 17 *Law & Contemp. Probl.* 276 (1952); Black, *Inequalities in Districting for Congress: Baker v. Carr and Colegrove v. Green*, 72 *Yale L. J.* 13, 21 (1962).

would take care so to mould their regulations as to favor the candidates they wished to succeed. Besides, the inequality of the Representation in the Legislatures of particular States, would produce a like inequality in their representation in the Natl. Legislature, as it was presumable that the Counties having the power in the former case would secure it to themselves in the latter."<sup>16</sup>

There is nothing inherent in the nature of congressional redistricting which requires exclusive congressional control under the established principles of the political question doctrine. As this Court said in **Baker v. Carr**, 369 U. S. 186, 217, 82 S. Ct. 691, 710, 7 L. Ed. 2d 663 (1962):

"Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question."

Since Congress has taken no steps to assure a more equitable apportionment of congressional districts, no question of review of determination of a coordinate branch of the federal government is presented by this appeal.

<sup>16</sup> II Farrand, *The Records of the Federal Convention of 1787*, 240-41 (1937); See Madison, *The Federalist* No. 60.



As in **Baker v. Carr**, "The question here is consistency of state action with the Federal Constitution." 369 U. S. 186, 226, 82 S. Ct. 691, 715, 7 L. Ed. 2d 663 (1962). Nor will a determination of the Appellants' Fourteenth Amendment claims require the Court to enter upon policy determinations for which judicially manageable standards are lacking. "Judicial standards under the Equal Protection Clause are well developed and familiar and it has been open to courts [to make such determinations] since the enactment of the Fourteenth Amendment." **Baker v. Carr**, 369 U. S. 186, 226, 82 S. Ct. 691, 715, 7 L. Ed. 2d 663 (1962).

This Court, in a long series of decisions, has consistently asserted jurisdiction in cases involving the apportionment of congressional districts, despite arguments to the contrary that these cases presented non-judicial political questions which were exclusively vested in Congress under Article I, Sections 4 and 5. **Smiley v. Holm**, 285 U. S. 355, 52 S. Ct. 397, 76 L. Ed. 795 (1932); **Carroll v. Becker**, 285 U. S. 380, 52 S. Ct. 402, 76 L. Ed. 807 (1932); **Koenig v. Flynn**, 285 U. S. 375, 52 S. Ct. 403, 76 L. Ed. 805 (1932); **Wood v. Broom**, 287 U. S. 1, 53 S. Ct. 1, 77 L. Ed. 131 (1932); **Colegrove v. Green**, 328 U. S. 549, 66 S. Ct. 1198, 90 L. Ed. 1432 (1946).

In **Smiley v. Holm**, 285 U. S. 355, 52 S. Ct. 397, 76 L. Ed. 795 (1932), an individual voter residing in one of Minnesota's more populous congressional districts brought an action to invalidate the 1931 apportionment of Minnesota's nine congressional seats on grounds that it had been vetoed by the governor.<sup>17</sup> This Court, in an opinion

<sup>17</sup> It was also urged that the act was invalid because of its failure to comply with the requirements of Section 3 of the Act of 1911 which required that congressional districts "contain as nearly as practicable an equal number of inhabitants." 37 Stat. 13. See **Wood v. Broom**, 287 U. S. 1, 53 S. Ct. 1, 77 L. Ed. 131 (1932);

written by Mr. Justice Hughes, rejected the contention that only non-justiciable political questions were presented and held the apportionment act invalid. The Court enjoined the election of Representatives under the existing apportionment and ordered that all nine Representatives be elected state-wide on an at-large basis if the state legislature failed to reapportion the State prior to the election. Similar relief was granted in Missouri, **Carroll v. Becker**, 285 U. S. 380, 52 S. Ct. 402, 76 L. Ed. 807 (1932), and New York, **Koenig v. Flynn**, 285 U. S. 375, 52 S. Ct. 403, 76 L. Ed. 805 (1932).

In **Wood v. Broom**, 287 U. S. 1, 53 S. Ct. 1, 77 L. Ed. 131 (1932), the Court rested its decision on grounds which plainly could not have been reached if the jurisdiction of Congress were exclusive. In that case, an action was brought by a qualified Mississippi voter to enjoin elections under an apportionment of congressional districts. It was asserted that the apportionment violated Section 3 of the Act of 1911 which required that Representatives "be elected by districts composed of a contiguous and compact territory, and containing as nearly as practicable an equal number of inhabitants." Although these requirements had been omitted from the Act of 1929, the district court, over the strong dissent of Judge Holms,<sup>18</sup> accepted jurisdiction and granted an injunction. **Broom v. Wood**, 1 F. Supp. 134 (S. D. Miss. 1932). In reversing the decision below on the merits, this Court held that the provisions of the Act of 1911, which had been relied upon by the lower court had not been carried forward by the Act of 1929, and consequently, expired by their own lim-

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*Mahan v. Hume*, 287 U. S. 575, 53 S. Ct. 223, 77 L. Ed. 505 (1932).

<sup>18</sup> The grounds asserted in dissent were later adopted by Mr. Justice Frankfurter in *Colegrove v. Green*, 328 U. S. 549, 66 S. Ct. 1198, 90 L. Ed. 1432 (1946).

itations.<sup>19</sup> Not a single justice accepted the arguments of Judge Holmes, in his dissent in the lower court, that the issues presented were beyond the jurisdiction of the federal courts.

Similarly, in **Colegrove v. Green**, 328 U. S. 549, 66 S. Ct. 1198, 90 L. Ed. 1432 (1936), a majority of this Court, relying on **Smiley v. Holm**, 285 U. S. 355, 52 S. Ct. 397, 76 L. Ed. 795 (1932), squarely held the issue of the validity of an apportionment of congressional districts to be subject to its jurisdiction, rejecting the contention of Mr. Justice Frankfurter that the matter had been exclusively committed by the Constitution to the jurisdiction of Congress. See, **Baker v. Carr**, 369 U. S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962).

**D. The Granting of an Effective Remedy by This Court Will Not Require It to Affirmatively Remap Congressional Districts Nor Bring It Into Conflict With Any Congressional Policy Favoring Elections by Districts.**

Unlike the cases involving the apportionment of state legislative districts, a grant of relief in the present case will not require the exercise of political power by the State in order to prevent a default in representation. Nor is any question of judicial remapping or reconstruction of geo-political districts presented, for Congress, has provided that, in the event of a failure of a State to enact a valid apportionment, Representatives are to be chosen state-wide in an at-large election. 2 U. S. C., § 2a (c); **Smiley v. Holm**, 285 U. S. 355, 52 S. Ct. 397, 76 L. Ed. 795 (1932).<sup>20</sup>

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<sup>19</sup> But see Black, *Inequities in Districting for Congress: Baker v. Carr and Colegrove v. Green*, 72 Yale L. J. 13, 18-21 (1962).

<sup>20</sup> See Black, *Inequities in Districting for Congress: Baker v. Carr, and Colegrove v. Green*, 72 Yale L. J. 13, 16 (1962).

The Appellants ask only that the Georgia Congressional District Apportionment Act of 1931 be declared invalid and that the Governor and the Secretary of State be permanently enjoined from conducting elections thereunder. Such a decree would be identical to that which was granted by this Court in **Smiley v. Holm**, 285 U. S. 355, 52 S. Ct. 397, 76 L. Ed. 795 (1932), and **Carroll v. Becker**, 285 U. S. 380, 52 S. Ct. 402, 76 L. Ed. 807 (1932). There the Court directed that "unless and until new districts are created, all Representatives allotted to the State must be elected by the State at large." **Smiley v. Holm**, 285 U. S. 355, 374-75; 52 S. Ct. 397, 76 L. Ed. 807 (1932).<sup>21</sup> The initiative and responsibility for the enactment of a new apportionment of congressional districts remains with the Georgia General Assembly. Guided by this Court's delineation of the applicable constitutional standards, the General Assembly which convenes in January of 1964, will have an ample opportunity to enact a new apportionment well in advance of the November elections. Only if the General Assembly fails to fulfill its constitutional responsibilities will Representatives be elected at-large.

The granting of such relief does not conflict with the policy of Congress which favors elections by districts. Although in normal circumstances Congress has indicated a preference for the election of Representatives by districts, Congress has expressly provided for at-large elections of Representatives in the event States should fail to reapportion after a reduction in its representation following a decennial census. 46 Stat. 26 as amended, 2 U. S. C., § 2a (c).<sup>22</sup> While not precisely applicable, this

<sup>21</sup> In each instance the Representatives were elected at large, no new apportionment having been enacted by the legislatures. See Lewis, *Legislative Apportionment and the Federal Courts*, 71 Harv. L. Rev. 1057, 1088 (1958).

<sup>22</sup> "Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which



statute provides strong evidence that the requirement that Representatives be elected by districts was not intended to be absolute or inflexible, but that Congress anticipated and sanctioned at-large elections of Representatives in extraordinary circumstances.

Perhaps the controlling considerations have best been stated by the Virginia Supreme Court of Appeals in **Brown v. Saunders**, 159 Va. 28, 166 S. E. 105, 111 (1932), in which the election of Virginia's nine Representatives on the basis of grossly unequal districts was enjoined. That Court said:

"In reaching this conclusion, we are not unaware of the fact that since November 20, 1788, Virginia has been divided into districts for the purpose of the electors in the respective districts selecting one Representative to Congress, and that the result of this decision will be that for the first time in 144 years the entire membership in the House of Representa-

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such State is entitled under such apportionment shall be elected in the following manner: (1) If there is no change in the number of Representatives, they shall be elected from the districts then prescribed by the law of such State, and if any of them are elected from the State at large they shall continue to be so elected; (2) if there is an increase in the number of Representatives, such additional Representative or Representatives shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; (3) if there is a decrease in the number of Representatives but the number of districts in such State is equal to such decreased number of Representatives, they shall be elected from the districts then prescribed by the law of such State; (4) if there is a decrease in the number of Representatives but the number of districts in such State is less than such number of Representatives, the number of Representatives by which such number of districts is exceeded shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; or (5) if there is a decrease in the number of Representatives and the number of districts in such State exceeds such decreased number of Representatives, they shall be elected from the State at large. June 18, 1929, c. 28, § 22, 46 Stat. 26, as amended Apr. 25, 1940, c. 152, §§ 1, 2, 54 Stat. 162; Nov. 15, 1941, c. 470, § 1, 55 Stat. 761." 2 U. S. C., § 2a (c).

tives from Virginia will be chosen by the electors in the state at large. However this may be, it is our duty, as it is the duty of all others, to obey the mandate of the fundamental law; and in obedience to the sovereign will of the people, speaking through the Constitution, we are forced to the conclusion reached in this case."

**E. The Issues Presented by This Appeal Were Not Rendered Moot by the November General Election.**

The Georgia statute creating the unequal apportionment of congressional districts did not expire with the general election and will continue to infringe the constitutional rights of the Appellants in all future elections unless its enforcement is restrained by this Court. The general election of November, 1962, was but the completion of one more of a long series of violations of Appellants' constitutional rights which have occurred in every election since the enactment of the apportionment in 1931 and which threatens to continue indefinitely until the statute is invalidated. **Porter v. Lee**, 328 U. S. 246, 66 S. Ct. 1096, 90 L. Ed. 1199 (1946). It is thus apparent that the controversy is a continuing one which was not mooted by the general election. **Gray v. Sanders**, 372 U. S. 368, 83 S. Ct. 801, 9 L. Ed. 2d 821 (1963). See **Southern Pacific Terminal Company v. Interstate Commerce Commission**, 219 U. S. 498, 31 S. Ct. 297, 55 L. Ed. 310 (1911); **Walling v. Helmerich**, 323 U. S. 37, 65 S. Ct. 11, 89 L. Ed. 29 (1944).

**CONCLUSION.**

The Appellants respectfully request that the decision of the District Court be reversed, and that the Georgia Congressional District Reapportionment Act of 1931 be declared unconstitutional and that the Appellees be perma-

nently enjoined from conducting elections for Representatives in Congress in conformity with its provisions.

Respectfully submitted,

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**Proof of Service.**

I, DeJongh Franklin, attorney for James P. Wesberry, Jr., and Candler Crim, Jr., appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 6th day of September, 1963, I served copies of the foregoing Brief on the appellees therein named, by mailing copies in a duly addressed envelope, with postage prepaid, to Eugene Cook, Attorney General, State of Georgia, State Law Building, Atlanta, Georgia, attorney of record for said appellees.

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**APPENDIX A.**

**CONGRESSIONAL-DISTRICT  
REAPPORTIONMENT.**

No. 157.

An Act to reapportion the several Congressional Districts of this State, by abolishing the twelve (12) districts created by the reapportionment Act of 1911, and creating in lieu thereof ten (10) Congressional Districts in this State, in accordance with the Act of Congress decreasing the number of congressmen from Georgia to ten (10); and for other purposes:

Repeal of Act of 1911 (Ga. L. 1911, p. 146).

Section 1. Be it enacted by the General Assembly of Georgia, and it is hereby enacted by authority of same, that the Congressional reapportionment Act approved August 19, 1911, being Bill No. 244, pages 146, 147, and 148 of the Acts of 1911, shall be and the same is hereby repealed, and the twelve (12) Congressional Districts created thereby are thereby abolished.

Ten congressional districts created.

Sec. 2. Be it further enacted by the authority aforesaid, that the State of Georgia is hereby divided into ten (10) Congressional Districts, in conformity with the Act of Congress of the United States approved June 18th, 1929 decreasing the number of congressmen from Georgia to ten (10) each of said districts being entitled to elect one representative to the Congress of the United States. The districts shall be composed of the following counties, respectively:



1st district.

First District: Bryan, Bulloch, Burke, Candler, Chatham, Effingham, Emanuel, Evans, Jenkins, Liberty, Long, McIntosh, Montgomery, Screven, Tattnall, Toombs, Treutlen, and Wheeler.

2d district.

Second District: Baker, Brooks, Calhoun, Colquitt, Decatur, Dougherty, Early, Grady, Miller, Mitchell, Seminole, Tift, Thomas, and Worth.

3d district.

Third District: Ben Hill, Chattahoochee, Clay, Crisp, Dodge, Dooley, Harris, Houston, Lee, Marion, Macon, Muscogee, Pulaski, Quitman, Randolph, Schley, Stewart, Sumter, Taylor, Peach, Terrell, Turner, Webster, and Wilcox.

4th district.

Fourth District: Butts, Carroll, Clayton, Coweta, Fayette, Heard, Henry, Lamar, Meriwether, Newton, Pike, Spalding, Talbot, Troup, and Upson.

5th district.

Fifth District: Campbell, DeKalb, Fulton, and Rockdale.

6th district.

Sixth District: Baldwin, Bibb, Bleckley, Crawford, Glascock, Hancock, Jasper, Jefferson, Jones, Johnson, Laurens, Monroe, Putnam, Twiggs, Washington, and Wilkinson.

7th district.

Seventh District: Bartow, Catoosa, Chattooga, Cobb, Dade, Douglas, Floyd, Gordon, Haralson, Murray, Paulding, Polk, Walker, and Whitfield.

8th district.

Eighth District: Atkinson, Appling, Bacon, Berrien, Brantley, Camden, Charlton, Clinch, Coffee, Cook, Echols, Glynn, Irwin, Jeff Davis, Lanier, Lowndes, Pierce, Telfair, Ware, and Wayne.

9th district.

Ninth District: Banks, Barrow, Cherokee, Dawson, Fannin, Forsyth, Gilmer, Gwinnett, Habersham, Hall, Jackson, Milton, Lumpkin, Pickens, Rabun, Towns, Stephens, Union, and White.

10th district.

Tenth District: Clarke, Columbia, Elbert, Greene, Hart, Lincoln, Madison, McDuffie, Morgan, Oconee, Oglethorpe, Richmond, Taliaferro, Walton, Warren, Wilkes, and Franklin.

Sec. 3. Be it further enacted by the authority aforesaid, that all laws, and parts of laws, in conflict herewith be and the same are hereby repealed.

Approved August 25, 1931.

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**In the Supreme Court of the United States**

**OCTOBER TERM, 1963**

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**No. 22**

**JAMES P. WESBERRY, JR., ET AL., APPELLANTS**

**v.**

**CARL E. SANDERS, ET AL.**

---

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF GEORGIA**

---

**BRIEF FOR THE UNITED STATES AS AMICUS CURIAE**

---

**OPINION BELOW**

The opinion of the three-judge district court (R. 36-55) is not yet reported.

**JURISDICTION**

The judgment of the three-judge district court was entered on June 20, 1962 (R. 36, -51). The notice of appeal to this Court was filed on August 17, 1962 (R. 55-56), and probable jurisdiction was noted on June 10, 1963 (R. 56). The jurisdiction of this Court rests on 28 U.S.C. 1253.

(1)

## QUESTIONS PRESENTED

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The Fifth Congressional District of Georgia has, according to the 1960 census, 823,680 inhabitants, while the least populous Congressional district in Georgia has 272,154 inhabitants. A three-judge federal district court dismissed an action challenging the constitutionality of the districting under the Fourteenth Amendment and Article I, Section 2, on the ground of want of equity. The questions presented are:

1. Whether the federal courts have power to consider claims, resulting from such grossly unfair districting, of denial of equal protection and due process under the Fourteenth Amendment and of rights protected by Article I, Section 2.

2. Whether the district court properly dismissed the action for want of equity.

## INTEREST OF THE UNITED STATES

This case involves the power and discretion of the federal courts to consider whether Congressional districting within a State violates the Fourteenth Amendment. The government participated in *Baker v. Carr*, 369 U.S. 186, which presented the parallel question whether the federal courts could consider the constitutionality of the apportionment of state legislatures. Both cases directly concern the basic right in a democracy to fair representation in one's own government. The federal government's interest is perhaps even greater in this case than in *Baker v. Carr* since fair representation in the federal legislature, Congress itself, is involved.

## STATUTES INVOLVED

Section 2a of Title 2 U.S.C., 55 Stat. 761, which provides for the decennial reapportionment of the House of Representatives, is set forth in the Appendix, pp. 45-46.

Section 2301 of Title 34, Georgia Code, which establishes the Congressional districts in Georgia, is set forth in the Appendix, pp. 46-48.

## STATEMENT

1. *The Complaint.*—Plaintiff-appellants, two citizens of the United States and of Georgia, are residents and qualified voters of Fulton County and the Fifth Congressional Election District of Georgia, which consists of Fulton (where Atlanta is located), DeKalb, and Rockdale Counties (R. 21-22, 57). They filed a class action on April 17, 1962, in the United States District Court for the Northern District of Georgia, on behalf of all qualified voters of the Fifth Congressional Election District and all qualified voters of Georgia who are or may become similarly situated (R. 1-17). Plaintiffs sought the vindication of voting and representation rights, allegedly debased by the failure of the Georgia General Assembly to realign the ten Congressional districts in accordance with the population of the State so as to equalize more nearly the population of the several districts (R. 1-17). The defendants are sued in their representative capacities as officials charged by law with the performance of duties in connection with elections (R. 1, 2). The action was brought under 42 U.S.C. 1983 and 1988,



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and jurisdiction was asserted under 28 U.S.C. 1343(3) (R. 2-3).

Plaintiffs alleged that 34 Ga. Code 2301 (see the Appendix, *infra*, pp. 46-48), the districting statute which was enacted in 1931, is arbitrary, capricious, and invidiously discriminatory since it results in gross inequalities in the number of inhabitants of the various Congressional districts, thereby depriving plaintiffs and others similarly situated of the full value of their right to vote (R. 8-11). They emphasized in particular that the Fifth District, where they resided, was seriously discriminated against since it had over three times the population of the least populous district. Plaintiffs claimed that the "reduction of the effectiveness" of their votes results in denial of equal protection of the laws and in denial of liberty and property without due process of law in contravention of the Fourteenth Amendment; violates Article I, Section 2 of the Constitution, which guarantees the right to vote for Congressmen and to have those votes "fully counted"; and violates the privileges and immunities clause of the Fourteenth Amendment by depriving them of the full exercise of the voting privilege guaranteed by Article I, Section 2 (R. 11-12).

Plaintiffs requested the convocation of a three-judge district court under 28 U.S.C. 2281, *et seq.* They sought (1) a declaratory judgment that the "existing Congressional malapportionment" has deprived, and continues to deprive, them of rights guaranteed by the Fourteenth Amendment, and that 34 Ga. Code

2301 violates the Fourteenth Amendment and Article I, Section 2 of the Constitution; (2) a prohibitory injunction restraining the defendants and their successors in office from conducting Congressional elections based on the present districts; and (3) unless the General Assembly of Georgia redistricts upon an "equitable and representative" basis, a mandatory injunction directing the defendants to conduct Congressional elections at-large until the General Assembly enacts proper redistricting legislation (R. 14-16).

2. *The Pre-Decision Proceedings in the District Court.*—The defendants' answer to the complaint alleged that the district court had no jurisdiction over the subject matter of the case; that the complaint failed to allege a claim upon which relief could be granted; and that the complaint failed to join indispensable parties (R. 18). Defendants also denied the material, conclusionary allegations of the complaint (R. 18-20). A three-judge district court consisting of Circuit Judges Elbert P. Tuttle and Griffin B. Bell and District Judge Lewis R. Morgan was convened. At the trial on May 23, 1962, testimonial and documentary evidence was introduced (R. 21-35, 37-139), which may be summarized as follows:

a. The defendants stipulated that the plaintiffs were residents and qualified voters of Fulton County and entitled to vote for Congressional candidates for election from the Fifth Congressional District (R. 21-22).

b. The documentary evidence included listings of Congressional districts in the United States according

to population (R. 79-92); percentage deviations of each State's Congressional districts from the average population per district in the State (R. 93-106); percentage deviations of each State's Congressional districts from the average population per district ranked on a national basis (R. 107-121); and a state-by-state table of Congressional district populations based on the 1960 census (R. 122-137). The table below shows the 1960 population of each of Georgia's Congressional districts, the percentage deviation of each district from the average population per district in Georgia, and the ratio of the population of the most populous (i.e., most under-represented) district to the population of the other nine districts (see R. 95, 124-125).

| District           | Dist. pop. (1960) | Percentage deviation from avg. pop. per dist. (avg. pop. 394,312) | Ratio of pop. of most under-represented dist. (the 5th) to pop. of other nine dists.* |
|--------------------|-------------------|---|---|
| 5th.....           | 823, 680          | 108.89  |   |
| 7th.....           | 450, 740          | 14.31   | 1.82 to 1.  |
| 3rd.....           | 422, 198          | 7.07  | 1.95 to 1.  |
| 1st.....           | 379, 933          | -3.64   | 2.16 to 1.  |
| 10th.....          | 348, 379          | -11.64  | 2.36 to 1.  |
| 6th.....           | 330, 235          | -16.25  | 2.49 to 1.  |
| 4th.....           | 323, 489          | -17.96  | 2.54 to 1.  |
| 2nd.....           | 301, 123          | -23.63  | 2.73 to 1.  |
| 8th.....           | 291, 185          | -26.15  | 2.82 to 1.  |
| 9th.....           | 272, 154          | -30.97  | 3.02 to 1.  |
| Total pop.....     | 3, 943, 116       |   |   |
| Pop avg. dist..... | 394, 312          |   |   |

\* These figures, like those in the table on p. 7 below, are computed by dividing the population of each of the other nine districts into the population of the Fifth District.

The table below shows, as of 1931 when 34 Georgia Code 2301 was enacted, the population figures of the

ten Congressional districts, their percentage deviations from the average population per district, and the ratio of the population of the most populous district to the population of the other nine districts (see R. 39).

| District            | 1960 population | Percentage deviation from avg. pop. per dist. (avg. pop. 289,176) | Ratio of pop. of most under-represented dist. (the 5th) to pop. of other nine dists. |
|---------------------|-----------------|---|--|
| 5th.....            | 396,112         | 57.72   |  |
| 3d.....             | 339,870         | 17.52   | 1.16 to 1.   |
| 1st.....            | 328,214         | 13.49   | 1.20 to 1.   |
| 10th.....           | 289,267         | 0.00  | 1.36 to 1.   |
| 6th.....            | 281,437         | -02.67  | 1.40 to 1.   |
| 7th.....            | 271,680         | -06.05  | 1.45 to 1.   |
| 2d.....             | 263,606         | -08.84  | 1.50 to 1.   |
| 4th.....            | 261,234         | -09.66  | 1.51 to 1.   |
| 8th.....            | 241,847         | -16.36  | 1.63 to 1.   |
| 9th.....            | 218,496         | -24.44  | 1.81 to 1.   |
| Total pop.....      | 2,891,763       |   |  |
| Avg. pop. dist..... | 289,176         |   |  |

Out of the 413 Congressional districts in the nation in January 1963,<sup>1</sup> the Fifth District of Georgia ranked as the second most populous, while the Ninth District of Georgia ranked 387th (R. 79, 91).<sup>2</sup> As of January 1963, Georgia had a maximum disparity of over three to one between its most under-represented and most

<sup>1</sup> Twenty-two representatives were elected at-large in 1962: Alabama (8), Alaska (1), Connecticut (1), Delaware (1), Hawaii (2), Maryland (1), Michigan (1), Nevada (1), New Mexico (2), Ohio (1), Texas (1), Vermont (1), and Wyoming (1) (R. 92).

<sup>2</sup> The Fifth District of Texas, with a 1960 population of 951,527, was the most populous Congressional district in the nation as of January 1963 (R. 79). The least populous district at that time was the 12th district of Michigan with a 1960 population of 177,431 (R. 92).



over-represented Congressional districts, which was the 6th highest disparity in the nation (R. 139).<sup>3</sup>

3. *The Decision of the District Court.*—On June 20, 1962, the district court, one judge concurring in part and dissenting in part, dismissed the complaint (R. 36-55). The court held that it had jurisdiction over the cause, that the plaintiffs had standing to bring the suit, and that the question presented was justiciable (R. 44). The court then pointed out that 34 Ga. Code 2301, when enacted in 1931, "reflected a rational state policy to set up the congressional districts in Georgia with some reasonable relation to population" (R. 45). However, the court went on to note that the Fifth District is now "grossly out of balance" with the nine other Congressional districts in Georgia, and that Section 2301 "reflects a system which has become arbitrary through inaction when considered in the light of the present population of the Fifth District and as measured by any conceivable reasonable standard" (R. 40, 45). The court stated that since it had recently required the Georgia General Assembly to be fairly apportioned (*Teomba v. Fortson*, 205 F. Supp. 248), "[i]t may well be that the arbitrariness which [the court] find[s] to be present as the statute relates to the Fifth District \* \* \* will be corrected by the re-apportioned Assembly" (R. 45). For this reason, the court said that it would have refused to decide whether the Constitution was violated, and denied

<sup>3</sup> Georgia's disparity was exceeded only by that of Michigan and Texas, which were over four to one, and Arizona, Colorado, and Ohio, which like Georgia were over three to one (R. 139).

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relief at this time but retained "jurisdiction to again consider the contentions of plaintiffs, if necessary, after the expiration of a reasonable time for relief by way of political remedy" (R. 45).

The court, however, did not retain jurisdiction. Instead, it dismissed the action on the ground of want of equity. Relying on *Colegrove v. Green*, 328 U.S. 549, the court said that "[w]e are not dealing simply with state action under the Fourteenth Amendment or in violation of Art. I, Section 2 of the Constitution for the state action complained of is inextricably subject to the rights allocated to Congress under the Constitution" (R. 45). The court pointed out that this Court, in *Gomillion v. Lightfoot*, 364 U.S. 339, and *Baker v. Carr*, 369 U.S. 186, gave "preservative treatment" to *Colegrove*, and that *Baker v. Carr* "goes no further than to open the doors of the courts for the purpose of adjudicating consistency of state action with the Federal Constitution where no question is concerned involving a coequal political branch of the government" (R. 49-50). Consequently, while the court said that it did not deem *Colegrove* "to be a precedent for dismissal based on the non-justiciability of a political question involving the Congress," it concluded that it was "strong authority for dismissal for want of equity when the following factors here involved are considered on balance: a political question involving a coordinate branch of the federal government; a political question posing a delicate problem difficult of solution without depriving others of the right to vote by district, unless we are to redistrict for

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the state; relief may be forthcoming from a properly apportioned legislature; and relief may be afforded by the Congress" (R. 50-51). The court then dismissed for want of equity (R. 51).

Circuit Judge Tuttle concurred in that part of the court's opinion denying injunctive relief because there was "no reasonable likelihood that the Georgia Legislature as properly constituted will fail in the future to rectify the gross inequalities that [the court] find[s] now exist in the Georgia Congressional Districts" (R. 52). He dissented from the holding of the majority that the federal courts have "no power to take cognizance of such a situation and declare the state apportionment laws unconstitutional" (R. 52). Judge Tuttle pointed out that neither *Baker v. Carr* nor *Colegrove v. Green* denied the authority to the federal courts to grant relief as to Congressional districting where the proof establishes a right to equitable relief from grossly disproportionate districting (R. 53-54). And he emphasized that (R. 54):

Complete relief can be granted to the plaintiffs here without the slightest interference with prerogatives or powers of the Federal Congress. That body, under the reapportionment statutes referred to in the majority opinion, has directed the State of Georgia to divide the people of the State into congressional districts. Presumably Congress intended for the State to do so within constitutional standards. The fact that Congress did not expressly prescribe that congressional districts should be reasonably equal as to population does not, of course, prevent the State from districting according to

equal population, nor, it seems to me, does it excuse the State from failing to do so if a failure to do so works an unconstitutional deprivation on the plaintiffs.

Plaintiffs noted an appeal to this Court (R. 55-56). On June 10, 1963, the Court noted probable jurisdiction (R. 56).

#### SUMMARY OF ARGUMENT

##### I

The federal courts have power to consider actions challenging Congressional districting under the Fourteenth Amendment.

A. The district court had jurisdiction of the subject matter. General jurisdiction is clearly conferred by 28 U.S.C. 1343 which gives the district courts jurisdiction of any civil action to secure redress of a violation of constitutional rights under color of state authority. *Baker v. Carr*, 369 U.S. 186, upheld the jurisdiction of the federal courts over suits involving the malapportionment of state legislatures; the same equally applies to suits attacking Congressional districting. Indeed, this Court has repeatedly entertained such suits on the merits. *E.g., Smiley v. Holm*, 285 U.S. 355.

B. The plaintiffs had standing to maintain this action for they seek to vindicate personal rights. Again, *Baker v. Carr* is controlling. Moreover, the Court has repeatedly entertained suits like this one where the plaintiffs were voters challenging the Congressional districting of their State.



C. The controversy is justiciable. In *Baker v. Carr*, 369 U.S. at 210, the Court said that the determination, whether an issue was a political question and therefore non-justiciable is "primarily a function of the separation of powers." In contrast to the matter involved there, the apportionment of a state legislature, Congressional districting does involve a coequal branch of the government and is within the power of Congress under Article I, Sections 4 and 5. On the other hand, a state statute is under attack here so that this action cannot cause actual interference with Congress.

Although a coequal branch of the government is to some extent involved, this Court's decisions clearly establish that Congressional districting is justiciable. First, there is no indication that the power conferred by the Constitution on Congress to regulate Congressional elections is exclusive; the mere existence of Congressional power has never been considered a bar to the courts invalidating state activity in violation of the Constitution. See *Gibbons v. Ogden*, 9 Wheat. 1. Second, the courts have found in other cases that constitutional rights have been violated by state officials miscounting votes and stuffing ballot boxes in Congressional elections. E.g., *United States v. Classic*, 313 U.S. 299. Third, the Court has repeatedly considered cases involving Congressional districting (e.g., *Smiley v. Holm*, *supra*) and in one case a majority of the Court held that the issue was justiciable (*Colegrove v. Green*, 328 U.S. 549). And fourth, *Baker v. Carr* states that cases involving Congressional districting are justiciable.

Even if this Court had not explicitly stated in *Baker v. Carr* that Congressional districting is justiciable, this result would follow from the Court's holding that cases involving state legislative malapportionment are justiciable. For on the crucial matters relating to justiciability, remedies and substantive standards, the problems are less serious as to Congressional districting. Elections-at-large are entirely practicable in the election of Congressmen and have been upheld at least four times by various courts, including twice by this Court, in cases challenging districting. And whatever other factors besides population may arguably be considered as to state legislative apportionment, the language and history of the Constitution make clear that Congressional districts must be as equal in population as possible.

## II

The district court erred in dismissing for want of equity. There are no particular facts in this case suggesting any reason why the federal courts should not exercise their jurisdiction. Although Mr. Justice Rutledge in *Colegrove v. Green*, *supra*, found a want of equity in that case because of the imminence of the election, there is no such problem here. As indicated above, an election at large is one practical remedy. There is no problem of interference with Congress since it has not acted in this field and there is no indication that it will act. While it is possible that the state legislature might have amended the statute, this is justification merely for delaying relief, not for dismissing the suit.

## III

The district court, in dismissing for want of equity, did not make clear its view of the merits. If, as we have argued, the court erred, the case should be remanded to the district court for determination of the substantive issues.

## ARGUMENT

*Introduction*

This case involves the right of all Americans to fair participation in the legislative branch of their own national government. The Constitution gives each State a minimum of one representative in the House of Representatives and apportions the other seats among the various States entirely on the basis of population. Article I, Section 2. Each state legislature then either divides the State into single-member districts or, in a few instances, decides to have one or more Congressmen elected at large. See 2 U.S.C. 2a, Appendix, pp. 45-46. In some States the legislatures have either deliberately districted in a discriminatory manner—i.e., have included substantially more people in one district than another—or this has been the result of the passage of time since the last districting.

The particular Congressional districting involved in this case is that in Georgia.<sup>1</sup> The Georgia legislature last districted in 1931 by dividing the State into 10 districts. Even at that time, the Fifth District, including Atlanta and its suburbs, was seriously discriminated against, having 396,112 people as contrasted to 218,496 in the least populous district.

Since that time, the Fifth District has grown to 823,680 people, while the least populous district has only 272,154 people, a ratio of over 3 to 1. Stated differently, the Fifth District has approximately one-fifth the population of the State, but only one-tenth the Congressmen, a denial of one-half its proper representation in the House of Representatives.

The initial issue in this case involves the power of the federal courts to consider whether Congressional districting within a particular State is consistent with the Fourteenth Amendment. In *Baker v. Carr*, 369 U.S. 186, this Court held that the federal court could entertain actions challenging the apportionment of state legislatures. We shall show below that, both under the authority of *Baker v. Carr* and considered independently, the federal courts have the similar power to consider the constitutionality of Congressional districting—that they have jurisdiction, that the persons whose votes have been diluted have standing to bring an action, and that the controversy is justiciable.

We then show that the district court erred in dismissing the action for want of equity. On the contrary, we submit, this is an appropriate case for the federal courts to exercise their equitable discretion and consider the alleged violation of the Fourteenth Amendment on the merits.

Finally, we state the government's position that the Court need not reach the merits at this time, but that, instead, this case should be remanded to the district court for further proceedings.



**THE FEDERAL COURTS HAVE POWER TO CONSIDER ACTIONS  
CHALLENGING CONGRESSIONAL DISTRICTING UNDER THE  
FOURTEENTH AMENDMENT**

In *Baker v. Carr*, 369 U.S. 186, this Court held that the federal courts have power to consider whether a state legislature is constitutionally apportioned. The district court, relying on *Baker v. Carr*, held that the federal courts equally have the power to consider the constitutionality of Congressional districting. Accord, *Thigpen v. Meyers*, 211 F. Supp. 826, 829-830 (W.D. Wash.). We submit that this determination was correct.

**A. THE DISTRICT COURT HAD JURISDICTION OF THE SUBJECT MATTER**

Section 1343 of Title 28 U.S.C. provides that "[t]he district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person . . . [t]o redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States . . . ." Section 1983 of Title 42 U.S.C. provides that "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." In *Baker v. Carr*, the complaint alleged that malapportionment of seats

in the Tennessee legislature deprived the plaintiffs—citizens residing in areas alleged to be underrepresented—of equal protection of the laws and due process under the Fourteenth Amendment. This Court held that such an allegation provides the necessary basis for federal jurisdiction under 28 U.S.C. 1343 and 42 U.S.C. 1983. 369 U.S. at 198-204.

In this case, the plaintiffs likewise brought suit under 28 U.S.C. 1343 and 42 U.S.C. 1983. They alleged that Georgia's Congressional districting system violates the Fourteenth Amendment because of the disparity which it creates between the weight and influence of the plaintiffs' votes and the weight and influence of the votes of other persons residing in Georgia. Thus, the claim in this case closely resembles the claim for relief involved in *Baker v. Carr*. The difference between a Fourteenth Amendment claim arising out of the malapportionment of seats in a state legislative body and a Fourteenth Amendment claim challenging discriminatory Congressional districting is plainly immaterial for purposes of jurisdiction of the subject-matter.

In *Baker v. Carr*, this Court relied on numerous cases involving Congressional districting to sustain federal court jurisdiction in the analogous field of apportionment of state legislatures. These cases are directly in point as to jurisdiction in the instant case, which involves Congressional districting. In *Davis v. Ohio*, 241 U.S. 565, the Court overruled a contention that a referendum, conducted pursuant to Ohio law, which rejected a Congressional redistricting statute

previously passed by the state legislature was invalid because the Constitution entrusted districting to the state legislatures alone. In affirming the judgment below, the Court expressly refused to dismiss for want of jurisdiction in view "of the subject-matter of the controversy and the Federal characteristics which inhere in it \* \* \*." *Id.* at 570. In numerous other cases, the Court has likewise entertained the merits, and in some cases, granted relief in actions challenging Congressional districting in various States. For example, in *Wood v. Broom*, 287 U.S. 1, the Court considered, although it rejected on the merits, a contention that Mississippi's Congressional districts violated the 1911 apportionment Act of Congress because they were not composed of compact and contiguous territories, having as nearly as practicable the same number of residents.<sup>4</sup> Accord, *Smiley v. Holm*, 285 U.S. 355; *Koenig v. Flynn*, 285 U.S. 375; *Carroll v. Becker*, 285 U.S. 380; *Mahan v. Hume*, 287 U.S. 575.<sup>5</sup>

In *Colegrove v. Green*, 328 U.S. 549, this Court refused to consider an attack on Congressional dis-

<sup>4</sup> The concurring opinion of four Justices in *Wood v. Broom* would have dismissed for want of equity rather than deciding the merits. 287 U.S. at 8-9. However, since the question of equitable discretion, like the merits, is logically reached only after the initial question of jurisdiction, that opinion likewise assumed that jurisdiction existed.

<sup>5</sup> Since *Mahan v. Hume* was brought to this Court after the election, the Court signified that the cause was moot by citing *Brownlow v. Schwartz*, 261 U.S. 216. However, by also citing *Wood v. Broom*, the Court made clear that it considered and rejected appellee's contentions on the merits.

tricting in Illinois on the ground that the great variations in population between districts violated the right of voters in the underrepresented districts to equal protection. However, four members of the seven-member Court which sat in the case expressly concluded that the federal courts had subject-matter jurisdiction. *Id.* at 565, note 2, 568.\* In a later attack on Illinois' Congressional districting, the Court dismissed *per curiam* for want of a substantial federal question (without citing authority or giving any reason), rather than for lack of jurisdiction. *Colegrove v. Barrett*, 330 U.S. 804.

The only exceptions to the principle that federal courts have jurisdiction over all actions based on a claim arising under the federal Constitution are cases in which the federal claim is patently frivolous, or is immaterial and made solely for the purpose of obtaining federal jurisdiction over a state cause of action. *E.g.*, *Water Service Co. v. Redding*, 304 U.S. 252; *Norton v. Whiteside*, 239 U.S. 144. The present case does not fit either exception. Whatever its ultimate merit, the complaint is squarely and exclusively founded upon the Fourteenth Amendment and Article I, Section 2. We discuss below (pp. 30-35) our contention that, at the very least, plaintiffs raise a substantial claim that Georgia's Congressional districting is unconstitutional. It is sufficient at this point to say that this discussion shows clearly that the issue

\* As the Court said in *Baker v. Carr*, *supra*, 369 U.S. at 202, it is doubtful that even the dissent in *Colegrove* questioned the subject-matter jurisdiction of the federal courts since it relied on the majority and concurring opinions in *Wood v. Broom*.



is not "so patently without merit as to justify \* \* \* dismissal for want of jurisdiction." *Bell v. Hood*, 327 U.S. 678, 683; see *Hart v. Keith Vaudeville Exchange*, 262 U.S. 271, 274; *Newburyport Water Co. v. Newburyport*, 193 U.S. 561, 579. Indeed, the substantiality of the issue is also demonstrated by the determination in *Baker v. Carr* that the issue there was not "unsubstantial and frivolous." 369 U.S. at 199. If the claim in *Baker v. Carr* was not so insubstantial as to warrant dismissal for lack of jurisdiction, the same is surely the case here.

**B. THE PLAINTIFFS HAD STANDING TO MAINTAIN THE ACTION**

*Baker v. Carr* also demonstrates that the plaintiffs had standing to maintain this suit. Plaintiffs alleged that they are citizens of the United States and Georgia; that they are residents of the Fifth Congressional District; that they are qualified to vote in Congressional elections (R. 1); and that they are injured by the disparity between the weight and influence of their votes, as residents of the Fifth District, and the votes of other residents throughout Georgia (R. 8-12). Here, as in *Baker v. Carr*, the injury which the plaintiffs assert is that the State discriminates against the voters in the area in which they reside, "placing them in a position of constitutionally unjustifiable inequality *vis-a-vis* voters in irrationally favored counties." 369 U.S. at 207-208. Plaintiffs, like the appellants in *Baker v. Carr*, "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely de-

pends for illumination of difficult constitutional questions." *Id.* at 204.

Even before *Baker v. Carr*, this Court recognized the standing of private persons to bring an action in federal courts in circumstances similar to the present case. In *Smiley v. Holm*, 285 U.S. 355, a unanimous Court reviewed the merits of, and granted relief in, a suit by a Minnesota "citizen, elector and taxpayer" (*id.* at 361) to enjoin the holding of a Congressional election pursuant to a state redistricting statute which violated the federal requirement that redistricting be carried out by the State's lawmaking power, including the approval of the governor. Similarly, in *Koenig v. Flynn*, 285 U.S. 375, the Court reviewed on the merits a suit brought by "citizens and voters" (*id.* at 379) of New York for a writ of mandamus to the state Secretary of State to certify that Representatives are to be elected according to districts defined in a resolution of the state legislature. Accord, *Davis v. Ohio*, 241 U.S. 565; *Carroll v. Becker*, 285 U.S. 380. In *Wood v. Broom*, 287 U.S. 1, the Court considered an attack on Mississippi's Congressional districts because they were not compact, contiguous, and nearly as equal in population as practicable which was brought by a "complainant, alleging that he was a citizen of Mississippi, a qualified elector under its laws." *Id.* at 4.

In *Colegrove v. Green*, which involved the constitutionality of Illinois' Congressional districts, the dissenting opinion of Mr. Justice Black, in which Justices Douglas and Murphy joined, stated that "appellants had standing to sue, since the facts alleged show

that they have been injured as individuals." *Id.* at 568. Mr. Justice Rutledge, while not explicitly adverting to this issue, in effect assumed standing by basing his concurrence in the result entirely on the ground of want of equity. Thus, a majority of the seven-member Court found or assumed that the plaintiff-voters had standing.<sup>1</sup> The other three members of the Court concluded that the wrong resulting from improper Congressional apportionment was suffered by the State as such rather than by individual voters. *Id.* at 552. This conclusion was based on the characterization of the action as an attempt to "reconstruct the electoral process" of the State "in order that it [might] be adequately represented in the councils of the Nation." *Ibid.* On the other hand, these Justices suggested that individual voters have standing to redress "a private wrong," namely, their "discriminatory exclusion \* \* \* from rights enjoyed by other citizens." *Ibid.* Here, plaintiffs are in no way seeking to vindicate Georgia's rights vis-à-vis the Nation. Instead, they assert that they have been denied representation through the over-representation of other citizens of Georgia. Their sole request is that they themselves receive adequate representation in the councils of the federal government by prohibiting their "discriminatory exclusion \* \* \* from rights enjoyed by other citizens."

<sup>1</sup> Professor Bickel states that "*Colegrove* is in no sense a standing case. The disadvantaged voters in *Colegrove* were injured, their claim had all the desirable immediacy, and no more suitable plaintiffs are imaginable." Bickel, *The Durability of Colegrove v. Green*, 72 Yale L.J. 39, 40.

## C. THE CONTROVERSY IS JUSTICIABLE

In *Baker v. Carr*, in discussing the issue of justiciability, the government argued that *Colegrove v. Green* did not hold that apportionment issues were political questions and therefore beyond the power of the federal courts. Brief for the United States as Amicus Curiae on Reargument, No. 6, October Term, 1961, pp. 54-61. In addition, we argued that *Colegrove*, even if it had held that cases involving Congressional districting were non-justiciable, did not apply to the situation before the Court in *Baker v. Carr*—i.e., malapportionment of a state legislature. *Id.* at 62-65. The principal reason which we gave for the distinction between Congressional districting and state legislative apportionment was that the plurality opinion in *Colegrove* relied heavily upon the power of the House of Representatives to judge the qualifications of its own members under Article I, Section 5, and of Congress to regulate the time, place, and manner of holding elections under Article I, Section 4. *Id.* at 62. We pointed out in our brief that neither section applied to state legislative apportionment.

In the opinion in *Baker v. Carr*, the Court discussed the issue of justiciability at length. The Court held that "[t]he nonjusticiability of a political question is primarily a function of the separation of powers." 369 U.S. at 210. Since state legislative apportionment involved the States rather than a coequal branch of the federal government, the Court concluded that the issue was justiciable. *Id.* at 226.



It is true that Congressional districting involves a coequal branch of the federal government. Congress has the power under Article I, Sections 4 and 5 to remedy the evil of unequal districting either by refusing to seat persons elected pursuant to discriminatory districting or by passing a statute regulating population disparities between districts in a State. Thus, Congressional districting does involve a coordinate branch, Congress, in the sense that Congress has the power to remedy the evil. On the other hand, the actual discrimination involved in this case was pursuant to a state statute and therefore, because Congress has not acted in this field, there can be no actual interference with it. See p. 39 below.

While Congressional districting involves to some extent a coequal branch of the federal government, we submit that decisions of this Court establish that it does not raise a political question and is justiciable. First, neither the Constitution nor its history states or even suggests that the power of Congress is exclusive. Although the power is explicitly conferred on Congress, so, for example, is the power of Congress to regulate commerce. Yet, since early in our history, this Court, independent of any statute, has struck down state activity interfering with commerce. *E.g.*, *Gibbons v. Ogden*, 9 Wheat. 1. See Bickel, *The Durability of Colegrove v. Green*, 72 Yale L.J. 39-40; Black, *Inequities in Districting for Congress: Baker v. Carr and Colegrove v. Green*, 72 Yale L.J. 13, 21.

Second, in *United States v. Classic*, 313 U.S. 299, and *United States v. Saylor*, 322 U.S. 385, this Court held that miscounting votes and stuffing ballot boxes

violated Article I of the Constitution. Since those cases involved criminal prosecution of state election officials under the Civil Rights Act, the Court was required to find, in order to uphold the convictions, that a right guaranteed by the Constitution was violated. This Court found that the defendants had violated such a right and stated in *Classic* (313 U.S. at 315):

Obviously included within the right to choose, secured by the Constitution, is the right of qualified voters within a state to cast their ballots and have them counted at Congressional elections.

If Article I protects voters from dilution of voting power by miscounting votes and stuffing ballot boxes, it would seem that it also protects voters from the dilution of their voting power from maldistricting. See Lewis, *Legislative Apportionment and the Federal Courts*, 71 Harv. L. Rev. 1057, 1074-1076. Thus, we submit that even before the Fourteenth Amendment was adopted, the federal courts had authority to hold invalid Congressional districting which was not based on population. Since the adoption of the equal protection clause of the Fourteenth Amendment—a provision of the Constitution which the federal courts have repeatedly enforced in the absence of Congressional legislation—this power has been clear.

*Third*, in cases directly involving Congressional districting, the Court has repeatedly held that the legality of the districting is not a political question beyond the power of the federal courts of adjudicate. In numerous cases the Court has either accepted or

rejected challenges to Congressional districting by various States on the merits without even discussing the issue of justiciability. *Davis v. Ohio*, *supra*; *Smiley v. Holm*, *supra*; *Koenig v. Flynn*, *supra*; *Carroll v. Becker*, *supra*; *Wood v. Broom*, *supra*. In *Colegrove v. Green*, Mr. Justice Frankfurter, joined by two other Justices, would have held that state apportionment of Representatives is a political question beyond the power of the federal courts to decide. One of the reasons given was that Section 4 "conferred upon Congress exclusive authority to secure fair representation by the States in the popular House." 328 U.S. at 554. But a majority of the participating Justices (Mr. Justice Rutledge, concurring, and the three dissenting Justices) took the view that the federal courts had the power to adjudicate the validity of the system of apportionment under attack. Mr. Justice Rutledge, whose vote in this respect was dispositive of the case, stated that the "effect [*of Smiley v. Holm*] is to rule that this Court has power to afford relief in a case of this type as against the objection that the issues are not justiciable." 328 U.S. at 565. However, he concluded that this power should be employed "only in the most compelling circumstances." *Ibid.* Since such circumstances were absent, he decided that "the case is one in which the Court may properly, and should decline to exercise its jurisdiction!" \* *Id.* at 566.

\* At this point, Mr. Justice Rutledge quoted in a footnote from *American Federation of Labor v. Watson*, 327 U.S. 582, 593: "The power of a court of equity to act is a discretionary one \* \* \*."

*Fourth*, after stating that justiciability and separation of powers are closely related, *Baker v. Carr* itself established that Congressional districting does not involve a political question. The Court stated that "*Smiley, Koenig, and Carroll* settled the issue in favor of justiciability of questions of congressional redistricting." 369 U.S. at 232. The Court then stated that a majority of the Justices in *Colegrove v. Green* followed these precedents and held that the issue was justiciable. The discussion in *Baker v. Carr* was not dictum even though the issue before Court involved the justiciability of state legislative apportionment, not Congressional districting. The justiciability of Congressional districting was stated as part of the Court's reasoning that the apportionment of state legislatures likewise did not raise a political question.

Even if this Court had not explicitly stated that a challenge to the constitutionality of a State's Congressional districting is justiciable, that ruling would fairly follow from the holding in *Baker v. Carr*. There, this Court held that the apportionment of state legislatures did not raise a political question beyond the power of the federal courts. Two of the most serious arguments that state legislative apportionment was not justiciable were the alleged lack of substantive criteria under the Fourteenth Amendment in this area and the difficulty of finding an appropriate judicial remedy if the apportionment were determined to be unconstitutional. Both these problems are, if anything, less serious with relation to Congressional districting than state legislative apportionment.

The difficulty of finding a proper judicial remedy is less as to Congressional districting than as to state



legislative apportionment. In both situations, the courts could enjoin further elections on the existing basis or reapportion and redistrict the state. The third likely remedy, elections at large, however, presents serious difficulties as to a state legislature.\* Legislative bodies frequently have 75 or more members and a statewide election would be extremely unwieldy. More important, legislators are intended to represent a portion of the people living in particular districts as contrasted to executive officials who are chosen by all the people. Thus, it is arguable that an election of an entire legislature at large interferes with the essence of the legislature as a representative body.

Election of all Congressmen from a particular State at large has few of these difficulties. The large majority of States have less than ten Representatives

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\* In *Colegrove v. Green*, Mr. Justice Rutledge, concurring, cast doubt on the practicability of both judicial redistricting and elections at large to remedy discriminatory judicial districting, 338 U.S. at 565-566. He stated that judicial redistricting would require a court to lay out boundary lines without guidance except compactness of territory and approximate equality of population. In the government's brief in *Baker v. Carr*, we suggested that this task would be easier as to state legislative apportionment because county lines could be followed. Brief for the United States as Amicus Curiae on Reargument, *Baker v. Carr*, No. 6, 1961 Term, pp. 65, 75-78. However, just as in the case of state legislative apportionment, county and city lines may be followed as to Congressional districting except where a city is entitled by population to more than 1 seat. Mr. Justice Rutledge also said in *Colegrove* that elections at large might produce more inequities than it could cure by depriving residents of the State of representation by districts. As we show below (pp. 28-30), these apprehensions concerning elections at large are greatly exaggerated as to Congressional elections.

and, even in the more populous States, election at large would not be nearly so troublesome as such an election of an entire legislative body. Indeed, from 1791 until 1842 and from 1929 to 1941 there was no federal statute requiring the States to elect Congressmen from districts. Districting probably is not required today. See 2 U.S.C. 2a, App., *infra*, pp. 45-46; *Colegrove v. Green*, 328 U.S. 549, 555; *Wood v. Broom*, 287 U.S. 1; Black, *Inequities in Districting for Congress: Baker v. Carr and Colegrove v. Green*, 72 Yale L.J. 13, 16, note 21. Indeed, 2 U.S.C. 2a provides for elections at large when a State's representation in Congress has been reduced and it fails to redistrict. If a State similarly fails to redistrict after its existing districts have been held unconstitutional, it is consistent with the policy of Section 2a to have elections at large. Such election of all of a State's representatives at large, particularly as a temporary matter, does not seriously interfere with the representative nature of the House of Representatives. The State would still be choosing Congressmen to join others elected from other States and districts throughout the country in a House made up of representatives of all the people.

States have been required by court orders to elect all their Congressmen at large on four different occasions. In *Smiley v. Holm*, 285 U.S. 355, 374, the Court stated that Minnesota's nine representatives could be elected at large and this was the result on remand. In *Carroll v. Becker*, 285 U.S. 380, 382, this Court affirmed a state court order requiring Missouri's thirteen representatives to be elected at large. The Virginia Supreme Court of Appeals has ordered that

that State's nine representatives must be elected at large (*Brown v. Saunders*, 159 Va. 28, 166 S.E. 105, 111) and a federal district court rendered a similar decision as to Kentucky's nine representatives (*Hume v. Mahan*, 1 F. Supp. 142 (E.D. Ky.)). In 1961, the Alabama legislature, faced with the problem of reducing that State's districts to eight as a result of the 1960 census, passed a statute providing for the election of Congressmen at large and this statute was upheld. *Alsup v. Mayhall*, 208 F. Supp. 713 (S.D. Ala.).

As to substantive standards, it is decisive that the Court held in *Baker v. Carr* that there was no lack of judicially manageable standards for determining whether a State's legislative apportionment violates the equal protection clause. The definition of the familiar constitutional standards in terms of apportionment and the resolution of any questions of degree arising in their application are matters now before the Court in pending cases. However the standards applicable to state legislative apportionment are defined, those applicable to Congressional districting must be at least as judicially manageable. Actually, we think, they will be simpler and more precise. None of the considerations which it is arguable may justify deviation from apportionment by population in the case of a state legislature are applicable to Congressional districting. While State policies are entitled to weight in apportioning State legislatures, they have little application in choosing federal officials.<sup>10</sup> Since the Constitu-

<sup>10</sup> Moreover, unlike the situation in the case of state legislative apportionment, there is no history of Congressmen representing political subdivisions. Each subdivision of the United States has obviously never been guaranteed a minimum of one Congressman to represent it.

tion makes plain that the House of Representatives was intended to represent population, it logically follows that each district within a State must be substantially equal in population.

The Constitution, as originally framed, provided that the Senate was to consist of two members from each State to be elected by the state legislatures. Art. I, Sec. 3. It further provided that "no State, without its Consent, shall be deprived of its equal Suffrage in the Senate." Art. V. Thus, it was clear that the Senate was intended to represent States. In contrast, the House of Representatives was to be elected directly by "the People of the several States" and that the apportionment between the States was to be based solely on population, with the only exception being that each State was entitled to a minimum of one. Art. I, Sec. 2. Thus, the House of Representatives was plainly intended to represent people. And the requirement that the apportionment between the States was to be according to population implies that this was also to be the sole standard within the States.

The history of the Constitution and its ratification strongly support this construction of Article I, Section 2. During debate at the constitutional convention in Philadelphia between the large and small States on representation in Congress, William Samuel Johnson of Connecticut described the compromise adopted as "in one branch the people, ought to be represented; in the other, the States." *I Records of the Federal Convention* (Farrand ed., 1911), p. 462. William Pierce of Georgia stated that he "was for an election by the people as to the 1st branch & by the States as to the 2d branch; by which means the citi-



zens of the States wd. be represented both individually & collectively." I *id.* at 137. See also I *id.* at 132 (James Wilson of Pennsylvania); II *id.* at 273 (James Mason of Virginia). In explaining Section 4 of Article I—which gives Congress the power to regulate "[t]he Times, Places and Manner of holding Elections"—James Madison made clear that it was intended to prevent abuses which might occur if the state legislatures controlled the elections. Among the abuses specifically mentioned was that "the inequality of the Representation in the Legislatures of particular States, would produce a like inequality in their representation in the Nat'l. Legislature, as it was presumable that the Counties having the power in the former case would secure it to themselves in the latter." II *id.* at 244. And Governor Randolph of Virginia explicitly stated that it was "inadmissible that a larger & more populous district of America should hereafter have less representation, than a smaller & less populous district." I *id.* at 579-580.

In Number 57 of *The Federalist Papers*, Madison plainly assumed that the States would district according to population in stating that "each representative of the United States will be elected by five or six thousand citizens." *The Federalist* (Cooke ed., 1961), p. 388). This forecast of the number of persons who actually would be entitled to vote in each district assumes that the districts will be fairly equal in population. See Hacker, *Congressional Districting* (1963), pp. 10-11. Later in the same paper, Madison remarked that "[t]he City of Philadelphia is supposed to contain between fifty and sixty thousand souls. It

will therefore form nearly two districts for the choice of Federal Representatives." *The Federalist, supra*, p. 389. This statement again assumed equal population in each Congressional district since the Constitution provided that States would receive a minimum of one Representative for each 30,000 people. And in Number 58, either Madison or Alexander Hamilton remarked that "one branch of the legislature is a representation of citizens, the other of the states . . . ." *Id.* at 392.

Debate at the state ratifying conventions likewise reflected the intent of the framers that Congressional districting was to be based on population. In the Massachusetts convention, Rufus King and Francis Dana, who were delegates to the federal convention,<sup>11</sup> defended Article I, Section 4 as preventing Congressional districting by the States which was not based on population. They gave as examples of such unfair representation South Carolina, Connecticut, Rhode Island, and Great Britain. II *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* (Elliot editor, 2d ed., 1854), pp. 49-51. Dr. Charles Jarvis stated that the Constitution provided that "30,000 inhabitants were entitled to send a representative, and that wherever this number was found, they would have a right to be represented in the federal legislature."<sup>12</sup> II *id.* at 29. Madison again defended Article I, Section 4 in the Virginia convention by stating (III *id.* at 367):

<sup>11</sup> Dana, however, was prevented by sickness from attending.

<sup>12</sup> Jarvis' statement is erroneous in part since the Constitution does not guarantee one representative for every 30,000 people, but a maximum of this ratio.

[I]t was thought that the regulation of time, place, and manner, of electing the representatives, should be uniform throughout the continent. Some states might regulate the elections on the principles of equality, and others might regulate them otherwise. This diversity would be obviously unjust. Elections are regulated now unequally in some states, particularly South Carolina, with respect to Charleston, which is represented by thirty members. Should the people of any state by any means be deprived of the right of suffrage, it was judged proper that it should be remedied by the general government.

Thus, Madison equated Congressional districting which gave citizens unequal power to elect Representatives with denial of the right of suffrage. John Steele defended Article I, Section 4 in the North Carolina convention against the claim that it would allow Congress to ensure the election of persons from the seacoast. He stated that Congress "may, and most probably will, lay the state off into districts" and that "[i]f the Congress make laws inconsistent with the Constitution, independent judges will not uphold them, nor will the people obey them." IV *id.* at 71. In the South Carolina convention, Charles Cotesworth Pinckney, another delegate to the federal convention, said that it was "absolutely necessary that Congress should have this superintending power, lest, by the intrigues of a ruling faction in a state, the members of the House of Representatives should not really represent the people of the state." IV *id.* at 303. He went on to say that "the House of Representatives will be

elected immediately by the people, and represent them and their personal rights individually; the Senate will be elected by the state legislatures, and represent the states in their political capacity \* \* \* " IV *id.* at 304."

The Constitution and its history demonstrate convincingly that the House of Representatives was intended to represent the people directly and that Congressional districting within each State, like the apportionment between the States, was to be on this same basis. Conceivably, this was merely the framer's intention rather than a binding requirement of the Constitution. However, the adoption of the Fourteenth Amendment—with its guarantee "of the equal protection of the laws"—strongly indicates that Congressional districting must be based on population. For regardless of whether equal protection requires that both houses of a state legislature be based exclusively on population, the original framers made clear that equal protection, and indeed the basic fairness required by the due process clause, so required as to federal House of Representatives.

To summarize, we are not arguing that the Fourteenth Amendment imposes the substantive standard that Congressional districting must be based on population even though we believe that this standard is correct. Similarly, we do not believe that the Court

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<sup>13</sup> The history of the Constitution with regard to representation in Congress is developed in further detail in Appendix B to the government's brief in *Maryland Committee for Fair Representation v. Tawes*, No. 29, this Term. This history shows that the House of Representatives was intended to represent the people equally.



need decide whether the appropriate remedy in cases involving Congressional districting is an election at large. As we discuss more fully below (pp. 42-43), these matters have not been decided by the district court and we do not think that the Court should determine them at this time. Instead, all that we are saying is that appropriate substantive standards do exist which appear to be more readily ascertainable and administrable than in the case of state legislative apportionment and that a remedy is available which may be more practicable than those relating to state legislatures. Therefore, if, as the Court determined in *Baker v. Carr*, state legislative apportionment is justiciable in the federal courts, the same should be true as to Congressional districting. Indeed, as we have shown above (pp. 25-27), this Court has assumed justiciability in the area of Congressional districting in a series of cases and explicitly so found in *Baker v. Carr*.

## II

### THE DISTRICT COURT ERRED IN DISMISSING THE ACTION FOR WANT OF EQUITY

While the district court held that the federal courts have, under this Court's decision in *Baker v. Carr*, the power to adjudicate the constitutionality of Congressional districting, it decided that this case should be dismissed for want of equity. The court reasoned that *Colegrove v. Green*, 328 U.S. 549, was "strong authority for dismissal for want of equity when the following factors here involved are considered on balance: a political question involving a coordinate

branch of the federal government; a political question posing a delicate problem difficult of solution without depriving others of the right to vote by district, unless we are to redistrict for the state; relief may be forthcoming from a properly apportioned state legislature; and relief may be afforded by the Congress" (R. 51). We submit that neither these, nor any other factors, justified the district court's determination.

The district court relied exclusively on *Colegrove v. Green* in dismissing the action for want of equity. In that case, the plurality opinion of Mr. Justice Frankfurter, who was joined by two other Justices, said that Congressional districting was a political question beyond the power of the federal courts. 328 U.S. at 554-556. Mr. Justice Rutledge, who cast the crucial vote, concluded that the Court should refuse to exercise its equitable discretion because "[t]he shortness of the time remaining [before the next election] makes it doubtful whether action could, or would, be taken in time to secure for petitioners the effective relief they seek." *Id.* at 565. In a subsequent case involving the Georgia county unit system, Mr. Justice Rutledge explained his position in *Colegrove* as based on the "particular circumstances" of that case. *Cook v. Fortson*, 329 U.S. 675, 678.

In the present case, the district court did not suggest that there was any difficulty arising from the imminence of an election. Moreover, there was ample opportunity, if the present districting were held unconstitutional, to give the Georgia legislature time to redistrict. That procedure has been followed in

numerous cases involving state legislature apportionment. *Sobel v. Adams*, 208 F. Supp. 316, 318 (S.D. Fla.); *Toombs v. Fortson*, 205 F. Supp. 248, 259, and unreported opinion, September 5, 1962 (N.D. Ga.); *Baker v. Carr*, 206 F. Supp. 341, 349, 350-351 (M.D. Tenn.); *Moss v. Burkhardt*, 207 F. Supp. 885, 894, 898-899 (W.D. Okla.); *League of Nebraska Municipalities v. Marsh*, 209 F. Supp. 189, 195-196 (D. Neb.); *Mann v. Davis*, 213 F. Supp. 577, 585-586 (E.D. Va.), pending on appeal, No. 69, this Term; *Thigpen v. Meyers*, 211 F. Supp. 826, 832 (W.D. Wash.); *Sincock v. Duffy*, 215 F. Supp. 169, 191-192 (D. Del.), pending on appeal, No. 307, this Term; *Maryland Committee for Fair Representation v. Tawes*, 228 Md. 412, 180 A. 2d 656, 670-671; *Maryland Committee for Fair Representation v. Tawes*, Circuit Court, Anne Arundel County, Maryland, decided May 24, 1962; *Harris v. Shanahan*, District Court, Shawnee County, Kansas, decided July 26, 1962; *Fortner v. Barnett*, No. 59,965, Chancery Court, First Judicial District, Mississippi. The time given the legislature to act could, if necessary, extend past the date of the next election. *League of Nebraska Municipalities v. Marsh*, *supra*, 209 F. Supp. at 195-196; *Toombs v. Fortson*, United States District Court for the Northern District of Georgia, decided October 19, 1962.

The reasons advanced by the district court for dismissing are all without merit. First, the district court said that the case involved a political question relating to a coordinate branch of the federal government. If the issue were wholly political, the case would have to be dismissed as non-justiciable (see the

discussion and cases cited in *Baker v. Carr*, *supra*, 369 U.S. at 211-229). As we have seen above (pp. 23-26), however, the issue is not political in that sense. Moreover, the district court's reasoning is inconsistent with Mr. Justice Rutledge's opinion in *Colegrove*, for that opinion, as was again explained in *Cook v. Fortson*, depended on the particular circumstances of the case. In contrast, if want of equity existed whenever a coordinate branch of government was involved, the federal courts could never decide cases of Congressional districting.

There was no danger of interference with the coordinate branch of the federal government. The federal courts have considered cases involving interference by the States with rights of citizens to vote in elections for Congress. *United States v. Classic*, 313 U.S. 299; *United States v. Saylor*, 322 U.S. 385 (see the discussion of these cases, pp. 24-25 above). Here, while elections to the House of Representatives are involved, there is no federal statute concerning the standards for Congressional districting. If what the district court meant was that Congress had power to act by disqualifying members from over-represented, under-populated districts and the court would therefore defer judicial action until Congress had the opportunity to exercise its power, then the court erred because history shows not the least prospect of Congressional action. In addition, this case involves as Judge Tuttle stated (R. 54), an attack on the Congressional districting statute passed by the Georgia legislature. Any interference which might result is



with a state statute—the same kind of interference which was involved in *Baker v. Carr* where this Court held that the “appellants are entitled to a trial and a decision.” 369 U.S. at 237.

The second reason suggested by the district court was that the case involves a political question because it can be solved only by depriving other voters of the right to vote by district or by having the court redistrict the State. This contention is also without merit. The same remedies exist for unconstitutional Congressional redistricting as for unconstitutional state legislative apportionment—judicial redistricting, enjoining elections on the present basis, and elections at large. As we have seen above (pp. 27–30), the first two remedies are equally practicable in both situations, while elections at large are more appropriate with regard to Congressional districting. Georgia has only ten Congressmen. In four instances, courts have ordered States with eight to thirteen Congressmen to elect their Congressmen at large because their existing districting was invalid and twice this remedy was approved by this Court (see p. 29 above). None of these remedies, however, may ever be necessary since it is sufficient at this time for the federal courts to hold the present districting unconstitutional and give the legislature time to redistrict (see the cases cited pp. 37–38 above). If the legislature decides not to do so and the district court orders an election at large, it is the state legislature, not the federal courts, which is deciding that Georgia should elect its Representatives at large rather than by districts. Moreover, here again, the district court's reasoning

would apply to all cases of Congressional districting, which is inconsistent with Mr. Justice Rutledge's opinion in *Colegrove* that the want of equity resulted from the particular circumstances of the case.

The district court's third justification for dismissal was that the state legislature might change the Congressional districting. This hope was based on the fact that, after a federal court holding that the Georgia legislature was unconstitutionally apportioned (*Toombs v. Fortson*, 205 F. Supp. 248 (N.D. Ga.)), the legislature reapportioned the Senate. However, as Chief Judge Tuttle stated in his dissent (R. 51-53, 54-55), there is no reason why this should mean that the action should be dismissed. Instead, the district court should have decided whether the existing districting was unconstitutional; "it could then have withheld further relief until the legislature had time to act. This would have fully protected the important interest in having the State decide for itself how its Congressmen are to be elected, while still ensuring the constitutional rights of the appellants. In contrast, the district court's decision means that, if the Georgia legislature fails to act, the appellants must bring an entirely new action which will certainly result in additional and unnecessary delay in the vindication of their constitutional rights.

Finally, the district court indicated that Congress might provide relief by passing a statute regulating districting. However, the Court did not suggest on what information this hope was based. Such action

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<sup>11</sup> While the court said that the existing system was arbitrary (R. 45), it is not clear whether it believed the districting was unconstitutional (see pp. 42-43 below).

is highly unlikely since Congress itself reflects the discriminatory districting now existing in many States (see, e.g., R. 139). In fact, Congress has not legislated on this subject since 1911 and that statute was superseded in 1929. Act of August 8, 1911, 37 Stat. 13; *Wood v. Broom*, 287 U.S. 1. Repeated efforts have been made in Congress in recent years to require the States to district on the basis of population, but without success. See Dixon, *Legislative Apportionment and the Federal Constitution*, 27 Law & Contemp. Problems 329, 349. There is no reason to believe that the likelihood of legislation is any greater at the present time. Furthermore, even if there were a reasonable likelihood that Congress would act, the district court should have adjudicated the merits and then waited a reasonable period of time before issuing an injunction in order to allow Congress to act.

In short, the issues in this case concerning Congressional districting are just as susceptible to judicial determination as those of state legislative apportionment involved in *Baker v. Carr*. In the latter case, this Court held that the plaintiffs were entitled to a trial and adjudication of their claim that the apportionment violated the Fourteenth Amendment. Plaintiffs are equally entitled to an adjudication of their constitutional rights by the district court in this case.

### III

THIS CASE SHOULD BE REMANDED TO THE DISTRICT COURT  
FOR DETERMINATION OF THE MERITS

We have shown above that the federal courts have power to consider whether Congressional districting

violates the Fourteenth Amendment and that the district court should have decided this question in this case. In fact, however, the district court dismissed for want of equity. It is true that the court stated that the districting "has become arbitrary through inaction when considered in the light of the present population of the Fifth District and as measured by any conceivable reasonable standard" (R. 45). On the other hand, the court said that "from the standpoint of the Fourteenth Amendment rights or the right to choose Representatives under Art. I, Section 2, of the Constitution, we do not now find proscribed invidiousness" (R. 45). The court then stated that, assuming the action was not dismissed for want of equity, it would have retained jurisdiction "to again consider the contentions of plaintiffs, if necessary, after the expiration of a reasonable time for relief by way of political remedy" (emphasis added) (R. 45). Thus, the court's view of the merits of this case is not at all clear. Furthermore, its statements on this issue are merely dictum, not a fully considered determination of the merits.

We do not believe that the substantive issue in this case should be decided initially by this Court. This issue, while analogous to that involved in the cases now before the Court involving the apportionment of state legislatures is, as we have seen (pp. 27-36), different in several respects. Thus, the question is one of first impression in this Court. We therefore submit that



the case should be remanded to the district court for full consideration and determination of the merits.<sup>15</sup>

#### CONCLUSION

For the foregoing reasons, we submit that the three-judge court had power to consider the issues presented, and that this is an appropriate case for a federal court to exercise its equitable discretion and consider the alleged violation of the Fourteenth Amendment. We urge, therefore, that the judgment below be reversed and the case remanded to the three-judge court for consideration on the merits.

Respectfully submitted.

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SEPTEMBER 1963.

<sup>15</sup> Appellees in their motion to affirm or dismiss with supporting brief, pp. 38-45, suggest that the case is moot because the 1962 Congressional elections have been held. However, since the relief appellants seek specifically applies to future elections as well (R. 13), the case is plainly not moot.

## APPENDIX

Section 2a of Title 2 U.S.C. provides:

(a) On the first day, or within one week thereafter, of the first regular session of the Eighty-second Congress and of each fifth Congress thereafter, the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the seventeenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions, no State to receive less than one Member.

(b) Each State shall be entitled, in the Eighty-third Congress and in each Congress thereafter until the taking effect of a reapportionment under this section or subsequent statute, to the number of Representatives shown in the statement required by subsection (a) of this section, no State to receive less than one Member. It shall be the duty of the Clerk of the House of Representatives, within fifteen calendar days after the receipt of such statement, to send to the executive of each State a certificate of the number of Representatives to which such State is entitled under this section. In case of a vacancy in the office of Clerk, or of his absence or inability to discharge this duty, then such duty shall devolve upon the Sergeant at Arms of the House of Representatives; and in case of vacancies in the offices of both the Clerk and the Sergeant at Arms, or the absence or inability of both to act, such duty shall de-

volve upon the Doorkeeper of the House of Representatives.

(c) Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner: (1) If there is no change in the number of Representatives, they shall be elected from the districts then prescribed by the law of such State, and if any of them are elected from the State at large they shall continue to be so elected; (2) if there is an increase in the number of Representatives, such additional Representative or Representatives shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; (3) if there is a decrease in the number of Representatives but the number of districts in such State is equal to such decreased number of Representatives, they shall be elected from the districts then prescribed by the law of such State; (4) if there is a decrease in the number of Representatives but the number of districts in such State is less than such number of Representatives, the number of Representatives by which such number of districts is exceeded shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; or (5) if there is a decrease in the number of Representatives and the number of districts in such State exceeds such decreased number of Representatives, they shall be elected from the State at large.

Section 2301 of Title 34 Georgia Code (1962) provides:

*Congressional districts.*—The State is hereby divided into 10 congressional districts, in conformity with the Act of Congress of the United States approved June 18, 1929, decreasing the

number of Congressmen from Georgia to 10, each of said districts being entitled to elect one Representative to the Congress of the United States. The districts shall be composed of the following counties, respectively:

First District: Bryan, Bulloch, Burke, Candler, Chatham, Effingham, Emanuel, Evans, Jenkins, Liberty, Long, McIntosh, Montgomery, Screven, Tattnall, Toombs, Treutlen, and Wheeler.

Second District: Baker, Brooks, Calhoun, Colquitt, Decatur, Dougherty, Early, Grady, Miller, Mitchell, Seminole, Tift, Thomas, and Worth.

Third District: Ben Hill, Chattahoochee, Clay, Crisp, Dodge, Dooly, Harris, Houston, Lee, Marion, Macon, Muscogee, Pulaski, Quitman, Randolph, Schley, Stewart, Sumter, Taylor, Peach, Terrell, Turner, Webster, and Wilcox.

Fourth District: Butts, Carroll, Clayton, Coweta, Fayette, Heard, Henry, Lamar, Meriwether, Newton, Pike, Spalding, Talbot, Troup, and Upson.

Fifth District: DeKalb, Fulton, and Rockdale.

Sixth District: Baldwin, Bibb, Bleckley, Crawford, Glascock, Hancock, Jasper, Jefferson, Jones, Johnson, Laurens, Monroe, Putnam, Twiggs, Washington, and Wilkinson.

Seventh District: Bartow, Catoosa, Chattooga, Cobb, Dade, Douglas, Floyd, Gordon, Haralson, Murray, Paulding, Polk, Walker, and Whitfield.

Eighth District: Atkinson, Appling, Bacon, Berrien, Brantley, Camden, Charlton, Clinch, Coffee, Cook, Echols, Glynn, Irwin, Jeff Davis, Lanier, Lowndes, Pierre, Telfair, Ware, and Wayne.

Ninth District: Banks, Barrow, Cherokee, Dawson, Fannin, Forsyth, Gilmer, Gwinnett,



Habersham, Hall, Jackson, Lumpkin, Pickens,  
Rabun, Towns, Stephens, Union, and White.  
Tenth District: Clarke, Columbia, Elbert,  
Green, Hart, Lincoln, Madison, McDuffie, Mor-  
gan, Oconee, Oglethorpe, Richmond, Taliaferro,  
Walton, Warren, Wilkes, and Franklin.

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IN THE  
**SUPREME COURT OF THE UNITED STATES.**

OCTOBER TERM, 1963.

Number 22.

**JAMES P. WESBERRY, JR., and CANDLER CRIM, JR.,**  
Appellants,

**CARL E. SANDERS, as Governor of the State of Georgia, and**  
**BEN W. FORTSON, JR., as Secretary of State of the**  
**State of Georgia,**  
Appellees.

On Appeal from the United States District Court for the  
Northern District of Georgia.

**BRIEF FOR THE APPELLEES.**

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IN THE  
**SUPREME COURT OF THE UNITED STATES.**

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OCTOBER TERM, 1963.

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Number 22

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**JAMES P. WESBERRY, JR., and CANDLER CRIM, JR.,**  
Appellants,

v.

**CARL E. SANDERS, as Governor of the State of Georgia, and**  
**BEN W. FORTSON, JR., as Secretary of State of the**  
**State of Georgia,**  
Appellees.

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On Appeal from the United States District Court for the  
Northern District of Georgia.

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**BRIEF FOR THE APPELLEES.**

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To the Honorable Chief Justice and Associate Justices of  
the Supreme Court of the United States:

**STATEMENT**

On April 17, 1962, the Appellants filed their Complaint<sup>1</sup> in the District Court for the Northern District of Georgia seeking injunctive relief<sup>2</sup> against the enforcement

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<sup>1</sup> Record, pp. 1-17.

<sup>2</sup> Record, p. 3, par. VI, p. 13, par. XXV; p. 15, prayers (g) and (h).

of the Georgia Congressional Reapportionment Act of 1931<sup>3</sup> and declaratory judgment<sup>4</sup> invalidating the Act on the grounds that it infringed upon rights of the Appellants guaranteed by the Equal Protection,<sup>5</sup> Due Process,<sup>6</sup> and Privileges and Immunities<sup>7</sup> Clauses of the Fourteenth Amendment, and, further that the Act violated Section 2 of Article I of the Federal Constitution requiring that Representatives be chosen by the people.<sup>8</sup> The Complaint prayed, inter alia, that no elections for Representatives be held, except on a state-at-large basis, pending redistricting by the state legislature on an "equitable and representative" basis.<sup>9</sup> By virtue of these allegations, a three-judge court was convened pursuant to 28 U. S. C., Sections 2281 and 2284, to hear and determine the cause.

In argument before the lower court, the Appellants placed chief reliance upon **Baker v. Carr**,<sup>10</sup> whose rationale went no further than to open the doors of the courts for the adjudication of the consistency of state action with the Federal Constitution when no question is involved concerning interference by the federal judiciary with a political branch of government coequal with this Court. On the other hand, the Appellees, in contending no equity in the Complaint, placed chief reliance upon **Colegrove v. Green**,<sup>11</sup>

<sup>3</sup> Ga. Laws, 1931, p. 46; Ga. Code, Sec. 34-2301.

<sup>4</sup> Record, p. 3, par. VI.

<sup>5</sup> Record, p. 11, par. XVIII, p. 14, prayer (d).

<sup>6</sup> Record, p. 12, par. XX, p. 14, prayer (c).

<sup>7</sup> Record, p. 11, par. XVII, p. 15, prayer (e).

<sup>8</sup> Record, p. 11, par. XVII, p. 11, par. XIX, p. 15, prayer (f).

<sup>9</sup> Record, p. 14, par. XXVII, p. 15, prayer (i).

<sup>10</sup> (1962), 369 U. S. 186, 7 L. ed. 2d 663, 82 S. Ct. 691.

<sup>11</sup> (1946), 328 U. S. 549, 90 L. ed. 1432, 66 S. Ct. 1198, reh. den., 329 U. S. 325, 91 L. ed. 701, 67 S. Ct. 118, rearg. den., 329 U. S. 828, 91 L. ed. 703, 67 S. Ct. 199.

which denied relief to parties seeking congressional re-districting in Illinois under facts more extreme than those presented in this case.

On June 20, 1962, the lower court rendered final judgment dismissing the Complaint for want of equity. The court in its opinion summarized the national picture on congressional districting in the following terms:<sup>12</sup>

The problem here is not peculiar to Georgia. For example, Florida has recently substantially changed its congressional districts by reason of the addition of four new congressmen making a total of twelve. The districts there now range in population from a low of 241,250 to a high of 660,345 as compared to the Florida average of 412,630 a variance greatly exceeding the suggested standard.<sup>13</sup> Dade County with a population of 935,047 is divided among two districts, one consisting of a part of Dade County only, and the other consisting of an adjoining county and the balance of Dade County. Duvall, Hillsborough, and Pinellas Counties each constitutes a district under the new plan with populations respectively of 455,411, 397,788 and 374,665, a sharp example of the variance in population per district if counties are to continue as a basis for districts except where the population of a county is so large as to require division.

There are 435 congressional districts in the United States. Twenty-two congressmen will be elected state-

<sup>12</sup> Record, p. 41, 2d par.; 206 F. Supp. 280, 1. col., 2d par. For a statistical analysis of the national posture of congressional districting, see Appellees' Exhibits Nos. 1, 2, 3, 4, 8 and B (Record, pp. 79, 93, 107, 114, 122, 139).

<sup>13</sup> "It is the position of plaintiffs that the population of each district should be within a range of ten to fifteen percent of the average district population based on a division of the number of districts into the total population of the state." Record, p. 39, last par.; 206 F. Supp. 279, 1. col., 2d par.

at-large in 1962. Of the remaining 413, the Fifth District of Texas has the largest population, 951,527. The Fifth District of Georgia, here under discussion is next. There are twenty-two districts with populations exceeding 600,000. Fifty districts have populations more than fifteen per cent above the state average, while ninety have populations of more than fifteen per cent below the state district average. Using ten per cent as a variance, or tolerance, one hundred eight districts are above and one hundred twenty-five are below the average, a total of two hundred thirty-three or more than one-half of all congressional districts. These figures in no way reflect on the problem of deprivation of rights of the type here asserted through use of the gerrymander, a problem with which we are not concerned here but one that could well be within the rationale of any decision reached.

The lower court recognized that a constitutionally reapportioned state legislature could well provide the relief sought by the Appellants, by stating that:<sup>14</sup>

Our view is buttressed by a due regard for the admonition in **Baker v. Carr** that a "judicially manageable standard" be adopted. This dictates that a reasonable time be afforded for the normal state governmental processes, where there is a substantial chance of relief as we believe there is, to run their course.

The court then moved on to an evaluation of the present vitality of **Colegrove** in the light of **Gomillion v. Lightfoot**<sup>15</sup> and **Baker v. Carr**, and reached the following conclusion:<sup>16</sup>

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<sup>14</sup> Record, p. 45, 3d par., 206 F. Supp. 282, r. col. (7).

<sup>15</sup> (1960), 364 U. S. 339, 5 L. ed. 2d 110, 81 S. Ct. 125.

<sup>16</sup> Record, p. 50, 3d par., 206 F. Supp. 285, r. col., 2d par.



It would be extraordinary indeed for the court to have departed any more than was absolutely necessary from the previous standard of withholding judicial relief in matters of the kind involved in **Baker v. Carr**, and a good reason to preserve the **Colegrove** doctrine while at the same time reversing the body of law as it concerned state action alone was that fairly apportioned state legislatures might well alleviate congressional district disparity. But whatever the reason we think **Colegrove** stands and so long as it does it will be our guide.

We do not deem it to be a precedent for dismissal based on the non-justiciability of a political question involving the Congress as here, but we do deem it to be strong authority for a dismissal for want of equity when the following factors here involved are considered on balance: a political question involving a coordinate branch of the federal government; a political question posing a delicate problem difficult of solution without depriving others of the right to vote by district, unless we are to redistrict for the state; relief may be forthcoming from a properly apportioned state legislature; and relief may be afforded by the Congress.

On August 7, 1962, the Appellants filed their Notice of Appeal to this Court (R. 55).

On January 14, 1963, the General Assembly of Georgia convened in regular session with its Senate apportioned according to population as required by **Toombs v. Fortson**.<sup>17</sup> During this session, Appellant Wesberry, a State Senator, introduced Senate Bill No. 101 for the redistricting of Georgia's congressional districts, but due to the gravity of the measure coupled with insufficient time for appropriate study, the Bill did not pass at that session.

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<sup>17</sup> (D. C. N. D. Ga. 1962), 205 F. Supp. 248.

but was referred to the Rules Committee of the Senate where it is still pending for further action. Next, Senator Julian Webb introduced Senate Resolution No. 56, for the creation of a joint Senate-House committee to study congressional redistricting, which was passed by the Senate, but was reported unfavorably in the House. However, this did not end "all attempts at reapportionment at that session of the General Assembly" as stated by the Appellants in their Brief (p. 7, last par.), because Senator Webb then introduced Senate Resolution No. 129 for the authorization of an interim Senate committee to study congressional redistricting and to report its recommendations and studies to the 1964 regular session of the General Assembly. This Resolution was adopted on March 15, 1963,<sup>18</sup> the day the General Assembly adjourned sine die.

On June 10, 1963, this Court issued its order noting probable jurisdiction in this case (R. 56).

In July, 1963, the Joint Congressional Redistricting Study Committee was created by the President of the Senate appointing ten Senators, one from each congressional district, and the Speaker of the House appointing ten Representatives, one from each congressional district.<sup>19</sup> Senator Julian Webb was made Chairman of this Committee. It is a matter of common knowledge that the Committee is in good faith pursuing its task of studying congressional redistricting for the purpose of recommending to the 1964 regular session of the General Assembly a fair and equitable plan for reducing the population variations among the congressional districts.

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<sup>18</sup> A certified copy of Senate Resolution No. 129 has been lodged with the Clerk of this Court.

<sup>19</sup> This Committee was created pursuant to Senate Resolution No. 78 and House Resolution No. 274, both adopted March 15, 1963, certified copies of which have been lodged with the Clerk of this Court.

## SUMMARY OF ARGUMENT.

### I.

The judgment of the lower court should be affirmed for properly dismissing the complaint for a want of equity.

Affirmance may be rested upon the "political question" doctrine epitomized by **Colegrove v. Green**, the only case directly in point, or upon the abstention doctrine because of the likelihood that state legislative action will afford the relief sought by the Appellants.

#### A. THE "POLITICAL QUESTION" DOCTRINE.

Article I, Section 4, Clause 1, of the Federal Constitution provides that "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such Regulations, except as to the Places of chusing Senators." In commenting upon this Clause in **The Federalist** (No. 59, 4th par.), Hamilton stated that it was intended to vest, "primarily" in the state legislatures and "ultimately" in the Congress, "a discretionary power" over congressional elections. This Court has long recognized that the power of the Congress under this Clause is paramount. **Smiley v. Holm**, 285 U. S. 355, 366.

Article I, Section 5, Clause 1, of the Federal Constitution provides in part that "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members . . ." (Emphasis supplied). By virtue of this Clause, each House of the Congress, acting in a judicial capacity, is the sole and exclusive judge of the elections, returns and qualifications of its members, and no other judicial bodies, including courts, have jurisdic-

tion of those matters. **Barry v. United States ex rel. Cunningham**, 279 U. S. 597, 613, 619.

In view of these authorities, it is manifest that the Congress has plenary power over the election of its membership, including the power to redistrict a state which failed to reapportion in conformity with the latest census or to intervene to correct specific inequalities in a state's districting plan.

Georgia's present congressional districting statute was enacted on August 25, 1931. The Federal Act of November 15, 1941 [55 Stat. 762, 2 U. S. C., Sec. 2a (c)], concerning the reapportionment of the House of Representatives following each decennial census, lists the five varying conditions that may confront a state having congressional districts following a national reapportionment. Under four of these conditions the Act requires that, until redistricting, all or certain of the Representatives of the people of a state shall be elected "from the districts then prescribed by the law of such State". Consequently, the 1941 Act constitutes a congressional confirmation and ratification of state districting acts, including Georgia's 1931 act, in existence at the time of the reapportionment based on the 1940 Census and, also, because of the 1941 Act's continuing effect, those in existence at the time of the reapportionments based on the 1950 and 1960 Censuses. Furthermore, it is self-evident that such is the intention of the Congress because it has long shown an affinity for districting whose present posture is mirrored by the House of Representatives.

With this constitutional and statutory background in mind, we turn now to the consideration of the rationale of **Colegrove v. Green**.

In **Colegrove**, the petitioners challenged the constitutionality of an Illinois statute establishing congressional



districts having population disparities far in excess of those present in this case. Justice Frankfurter announced the judgment of the Court in an opinion, concurred in by Justices Reed and Burton, stating that dismissal of the action was required both by **Wood v. Broom**, 287 U. S. 1, holding that there is no federal requirement that congressional districts shall contain as nearly as practicable an equal number of inhabitants, and because the complaint suffered from a want of equity. The opinion emphasized that the relief sought by the petitioners was beyond the competence of this Court to grant, and "that the Constitution has conferred upon Congress exclusive authority to secure fair representation by the States in the popular House and left to that House determination whether States have fulfilled their responsibility," 328 U. S. 554, and that the remedy for any failure in this area lies with the Congress and ultimately with the people.

Justice Rutledge concurred in the judgment because he believed the Court should exercise its discretion to dismiss for a want of equity. Justices Black, Douglas and Murphy joined in a dissent predicated upon the assumption that there was no likelihood that Illinois would afford relief to the petitioners. As we will see later, such an assumption is unwarranted in this case because of the probability that the reconstituted Georgia legislature will afford the relief sought by the Appellants.

The **Colegrove** doctrine has in effect been reaffirmed by this Court through the citation of **Colegrove** as authority in the following cases which avoided intervention in political matters: **Radford v. Gary**, 352 U. S. 991; **Kidd v. McCaless**, 352 U. S. 920; **South v. Peters**, 339 U. S. 276; and **MacDougall v. Green**, 335 U. S. 281.

In **Gomillion v. Lightfoot**, 364 U. S. 339, decided on November 14, 1960, this Court invalidated a state statute re-

defining the boundaries of the City of Tuskegee on the ground of unconstitutional racial discrimination. In its opinion, this Court carefully distinguished between **Colegrove** and **Gomillion** thereby demonstrating clearly the intention to preserve **Colegrove**.

In **Baker v. Carr**, 369 U. S. 186, the apparent inspiration for this litigation and the case most heavily relied upon by the Appellants, this Court went no further than to open the doors of the courts for the adjudication of the consistency of state action with the Federal Constitution when no question is involved concerning interference by the federal judiciary with a political branch of government coequal with this Court. In its opinion, the Court elaborately distinguished between the "political question" cases and those appropriate for adjudication, thereby clearly maintaining the vitality of **Colegrove** within the political sphere. 369 U. S. 210, 226.

The "political question" doctrine is characterized by the interrelationships of the federal courts to the other two branches of the Federal Government, and not the relationship of such courts to the States. The delicate questions involved in these separation of powers contexts were not present in **Baker**, which only involved the federal courts and a state and the well settled criteria developed under the Equal Protection Clause.

In **Wood**, **Colegrove** and **Baker**, this Court has clearly announced its judgment that claims of the nature here presented are not appropriate for adjudication.

#### B. THE ABSTENTION DOCTRINE.

The impact of **Baker v. Carr** has created a dramatic transformation in the political life of Georgia.

On April 28, 1962, a three-judge district court held in **Sanders v. Gray**, 203 F. Supp. 158, that Georgia's county-

unit method of tabulating the vote cast in party primaries for the nomination of candidates for the Governorship and other statewide offices was unconstitutional by virtue of the severe dilution of the urban vote. Consequently, a candidate was nominated for the office of Governor in a primary where all votes were tabulated equally, and, thereafter, the candidate was elected Governor by the people of Georgia in the General Election held on November 6, 1962. It is a matter of common knowledge in Georgia that the Governor exercises great influence upon the activity of the General Assembly of Georgia.

On May 25, 1962, a three-judge district court held in **Toombs v. Fortson**, 205 F. Supp. 248, that the General Assembly of Georgia, composed of a Senate and House of Representatives, was unconstitutionally constituted in that neither House thereof was apportioned according to population. The court further held that the General Assembly must be reconstituted so that at least one House thereof will have been reapportioned according to population prior to the convening of the General Assembly in January, 1963. In accordance with this judgment, the General Assembly convened in extraordinary session and on October 5, 1962, reapportioned the membership of the Senate entirely on a population basis. The membership of this reconstituted Senate was elected at the General Election held on November 6, 1962. The General Assembly convenes in regular session on the second Monday in January of each year.

It is interesting to note that Appellant Wesberry was elected as a member of the reconstituted Senate and that he campaigned on a promise to seek congressional redistricting. He has not previously been elected to membership in the General Assembly.

The membership of the House of Representatives of the General Assembly is composed of 205 Representatives, 84

of whom represent the 38 most populous counties. While the House is apportioned largely according to geography, it is nevertheless clear that the urban areas possess a powerful voice in the House.

In July, 1963, the Joint Congressional Redistricting Study Committee of the General Assembly was created by the President of the Senate appointing ten Senators, one from each congressional district, and the Speaker of the House appointing ten Representatives, one from each congressional district. It is a matter of common knowledge that the Committee is in good faith pursuing its task of studying congressional redistricting for the purpose of recommending to the 1964 regular session of the General Assembly a fair and equitable plan for reducing the population variations among the congressional districts. Furthermore, the Governor has announced publicly that he will support any fair and equitable redistricting plan.

These factors compellingly illustrate the likelihood, recognized by the lower court, that the relief sought by Appellants will be afforded by the reconstituted General Assembly. This likelihood is further intensified by the work of the Joint Congressional Redistricting Study Committee. It may reasonably anticipate the cooperation of the Governor, the Senate and a substantial representation in the House, in securing fair and equitable congressional redistricting.

These circumstances call for the application of the doctrine of equitable abstention. **Great Lakes Dredge & Dock Company v. Huffman**, 319 U. S. 293, 297.

The determination which the Appellants would have this Court make lies in an extremely sensitive area involving the relationship of the powers of the National Government to those of the States. Here, of all places, the federal courts should act cautiously and with great



circumspection and should avoid any action where relief may be furnished by the State. This philosophy of comity governing federal-state relations has been applied by this Court in myriads of contexts.

The cases in which the abstention doctrine has been applied reflect a sound and salutary policy derived from our federalism for the purpose of maintaining a balanced and harmonious relationship between federal and state authority. The considerations that prevailed in the abstention cases for avoiding the hazards of serious disruption by federal courts of state government or needless friction between federal and state authority are all the more appropriate in this case where there is a strong likelihood that the issues will be resolved by state legislative action. Under such circumstances, the lower court did not abuse its discretion in dismissing the Complaint.

#### C. CONCLUSION.

Prior to **Baker v. Carr**, the voice of the majority in state government had become largely impaired by virtue of the massive and continuing population shift from rural to urban areas being inadequately reflected in the state legislatures.

**Baker v. Carr** promises judicial relief for the restoration of the majority to its rightful place in the state legislatures. In **Gray v. Sanders**, 372 U. S. 368, this Court affirmed the invalidation of the Georgia county unit system which had subdued the majority influence in the politically powerful Democratic primary for the nomination of state officers; and the decision of the district court in **Toombs v. Fortson**, resulted in the reapportionment of Georgia's Senate according to population. The restoration of these democratic processes has placed Georgia's political destiny in the hands of the majority. Nevertheless, the appellants ignore the conventional remedy and

seek relief from this Court, which if granted, would thrust it into an unseemly conflict with the Congress.

Some enthusiasts for court ordered congressional re-districting, including the appellants, urge the creation of districts which do not vary below 85 percent or above 115 percent of the state population norm. Appellees' Exhibit No. 2 (R. 187-200) reveals that only nine states satisfy this criterion, while the remaining thirty-three states, having congressional districts, fail to qualify.

The Appellees' Exhibits (R. 79-139) and the findings of the lower court (206 F. Supp. 280) clearly illustrate that the form of congressional districting complained of in Georgia is not exotic, but epitomizes a national practice. Furthermore, the figures in these Exhibits do not tell the whole story because they do not show the gerrymander, a common method of districting in many states. This big picture is significant because any direct change by the Court in this area would trigger the rapid institution of widespread redistricting litigation which would place the very existence of the present membership of the National House of Representatives in jeopardy.

However, in **Baker v. Carr**, this Court has set in motion a great engine designed to give the urban areas of the Nation a far greater influence in their state legislatures, an influence which obviously will result in the reshaping of congressional districts according to population. Through this reaction the Appellants will achieve their ends. But, here they seek to catapult this Court into an area constitutionally insulated against judicial interference and involving the most sensitive and delegate relationships with the Congress. In recognition of this, the Court has wisely preserved **Colegrove** and is properly leaving congressional redistricting to reapportioned state legislatures.

These matters involve the internal functioning of a coordinate department, and regard for the separation of

powers, if nothing else, should lead this Court to respect the internal autonomy of the Congress. The traditional deference of this Court for the Congress and the well established principles of equity demand the affirmance of the judgment of the lower court under the circumstances of this case.

## II.

This appeal should be dismissed on the ground that the matters in controversy have become moot. In any event, this appeal should be dismissed on the ground that the relief sought as to the congressional election to be held on November 3, 1964, is premature because of the likelihood that the State will afford interim relief.

### A. MOOTNESS.

The immediate object of the Complaint in this case was to require congressional redistricting prior to the holding of the General Election on November 6, 1962, or, in the alternative, to require the election of Representatives on a state-at-large basis in the General Election. The Election has now been held and the Representatives of the people of Georgia have been elected for the succeeding two years and, therefore, the immediate controversy between the parties has become moot. There are no acts to restrain at the present time and the other relief sought by the Appellants would have no immediate effect because Georgia's congressional representation has been fixed for the 1963-64 term.

Nevertheless, the Appellants attempt to maintain an active controversy by seeking injunctive and declaratory relief aimed at the General Election to be held on November 3, 1964, and subsequent elections. However, the seeking of this additional relief does not rescue the appeal from its newly acquired theoretical status because the

appeal now only presents an abstract question divorced from any presently existing right or actual controversy. This mootness is further intensified by the probability that the state legislature will afford the relief sought, and the possibility that the Appellants may be ineligible to vote in subsequent general elections through a change in residence or otherwise. What the Appellants really seek at this time is an advisory opinion which is not susceptible of judicial determination.

**B. PREMATURETY AS TO THE 1964 CONGRESSIONAL ELECTION.**

In **Remmey v. Smith**, 102 F. Supp. 708, the plaintiffs sought to have a state apportionment act declared unconstitutional and to compel the state legislature to reapportion itself. The three-judge district court held that the suit was premature, on the possibility that the state legislature would afford the relief sought, and dismissed for want of equity.

Upon appeal, this Court entered a *per curiam* opinion stating in part that "The motion to dismiss is granted and the appeal is dismissed for the want of a substantial Federal question." **Remmey v. Smith**, 342 U. S. 916.

The dismissal granted by this Court in **Remmey** is even more appropriate in this case because it involves congressional redistricting in contrast with state legislative reapportionment and, furthermore, because there is a stronger likelihood in this case that the state legislature will afford the relief sought by the Appellants. Hence, this appeal should be dismissed on the ground that the relief sought by the Appellants as to the congressional election to be held on November 3, 1964, is premature.



## ARGUMENT.

### 1.

THE JUDGMENT OF THE DISTRICT COURT SHOULD BE AFFIRMED FOR PROPERLY DISMISSING THE COMPLAINT FOR A WANT OF EQUITY.

Affirmance may be rested upon the "political question" doctrine epitomized by **Colegrove v. Green**, the only case directly in point, or upon the abstention doctrine because of the likelihood that state legislative action will afford the relief sought by the Appellants.

#### A. THE "POLITICAL QUESTION" DOCTRINE.

##### 1. Congressional Confirmation of Georgia's Congressional Districts.

Article I, Section 4, Clause 1, of the Federal Constitution provides that "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators." In commenting upon this Clause in **The Federalist** (No. 59, 4th par.), Hamilton stated that it was intended to vest, "primarily" in the state legislatures and "ultimately" in the Congress, "a discretionary power" over congressional elections.

This Court has long recognized that the power of the Congress under this Clause is paramount.<sup>20</sup> In **Smiley v. Holm**,<sup>21</sup> this Court in construing such Clause held that:

<sup>20</sup> *Ex Parte Siebold* (1880), 100 U. S. 371, 384, 1st par., 25 L. ed. 717, 721, r. col., last par. See also: *Ex Parte Coy* (1888), 127 U. S. 731, 752, last par., 32 L. ed. 274, 278, l. col., last par., 9 S. Ct. 1263.

<sup>21</sup> (1932), 285 U. S. 355, 76 L. ed. 795, 52 S. Ct. 397.

It<sup>22</sup> cannot be doubted that these comprehensive words embrace authority to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns; in short, to enact the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved.

In 1941, this Court held that this Clause authorized the Congress to regulate primary as well as general elections "where the primary is by law made an integral part of the election machinery."<sup>23</sup>

Article I, Section 5, Clause 1, of the Federal Constitution provides in part that "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members. . . ." (Emphasis supplied.) By virtue of this Clause, each House of the Congress, acting in a judicial capacity, is the sole and exclusive judge of the elections, returns and qualifications of its members, and no other judicial bodies, including courts, have jurisdiction of those matters.<sup>24</sup>

<sup>22</sup> Id., 285 U. S. 366, 2d par., 76 L. ed. 800, 1. col., last par.

<sup>23</sup> *United States v. Classic* (1941), 313 U. S. 299, 318, last par., 85 L. ed. 1368, 1379, r. col., 1st par., 61 S. Ct. 1031, reh. den., 314 U. S. 707, 86 L. ed. 565, 62 S. Ct. 51. See also: *Smith v. Allwright* (1944), 321 U. S. 649, 88 L. ed. 987, 64 S. Ct. 757, reh. den., 322 U. S. 769, 88 L. ed. 1594, 64 S. Ct. 1052.

<sup>24</sup> *United States v. Norris* (1937), 300 U. S. 564, 573, 2d par., 81 L. ed. 808, 812, r. col., last par., 57 S. Ct. 535, 538; *Barry v. United States ex rel. Cunningham* (1929), 279 U. S. 597, 613, last par., 619, 1st par., 73 L. ed. 867, 871, r. col., last par., 874, 1. col., last par., 49 S. Ct. 452; *Saunders v. Wilkins* (C. C. A.-4th-1945), 152 F. 2d 235, 238 (3), cert. den., 328 U. S. 870, 90 L. ed. 1640.

In **Keogh v. Horner**,<sup>25</sup> the petitioner sought a writ of prohibition against the Governor of Illinois prohibiting the issuance of certificates of election to those who were ostensibly elected, as members of the Congress at the preceding general election, on the ground of a great disparity of population among the various congressional districts. The court, in denying the relief sought, held that:

The<sup>26</sup> statute, by virtue of which the Governor acts, is as follows (Smith-Hurd Ann. St. Ill. c. 46, § 80, paragraph 82, chapter 46, Elections, Cahill's Rev. St. Illinois 1933): "The Secretary of State, Auditor, Treasurer, and Attorney General, or any two of them in the presence of the Governor shall proceed within twenty days after the election, and sooner if all the returns are received, to canvass the votes given for United States Senators and Representatives to Congress, \* \* \* and the persons having the highest number of votes for the respective offices, shall be declared duly elected; \* \* \* and to each person duly elected, the Governor shall give a certificate of election or commission, as the case may require, and shall cause proclamation to be made of the result of the canvass:

It would seem to me the Governor has no discretion except to issue the certificate of election or commission to those entitled thereto as is provided in the foregoing section. To hold that the Governor acts in a judicial capacity would do violence, not only to the plain language of the statute just quoted, but

66 S. Ct. 1362, reh. den., 329 U. S. 825, 91 L. ed. 701, 67 S. Ct. 119; *Scrilla v. Elizalde* (C. A.-D. C.-1940), 112 F. 2d 29, 37 (6). For state court cases on this point, see the Annotation at 10 A. L. R. 205-209.

<sup>25</sup> (D. C.-S. D. Ill.-1934), 8 F. Supp. 933.

<sup>26</sup> *Id.*, p. 934, r. col. 3d par.

would confer upon him the right to conduct and settle contests concerning members of Congress, when that power is expressly conferred upon the respective Houses of Congress by the Constitution of the United States. If the Governor, acting judicially, can determine those elected as members of Congress are to be denied a certificate of election on account of the character of the districts from which they were elected, or because of the failure of the General Assembly to redistrict the state, "it would be just as reasonable to conclude that he has the authority and duty to determine any other question concerning the legality of their election, such as the qualifications provided by the Constitution, violation of the Federal Corrupt Practices Act, or any of the other questions which are so often raised in the House of Representatives in election contests. Such a construction of course, would be ridiculous. If the Governor refused or was prohibited from issuing such certificates of election and the situation was presented to the House of Representatives, I do not doubt but what the House would have the right to seat the members elected without any certificate just as it could refuse to seat the members with a certificate, if it chose so to do. In other words, the power of the respective Houses of Congress with reference to the qualifications and legality of the election of its members is supreme. The many volumes of election contest cases in which every conceivable question has been raised with reference to the right of persons to sit as members of Congress, together with the fact that there are no court decisions to be found, controlling such matters, bear mute but foreible evidence that this court has no authority to be the judge of the manner in which such members were elected, or to interfere with the Governor in furnishing them a



certificate or commission, as to what the canvass shows with reference to their election.

The court has no jurisdiction to issue the writ prayed for, and the petition is herewith dismissed.

In view of these authorities, it is manifest that the Congress has plenary power over the election of its membership, including the power to redistrict a state which failed to reapportion in conformity with the latest census or to intervene to correct specific inequalities in a state's districting plan.

Georgia's present congressional districting statute was enacted on August 25, 1931.<sup>27</sup> The Federal Act of November 15, 1941 [55 Stat. 762, 2 U. S. C., Sec. 2a (c)], concerning the reapportionment of the House of Representatives following each decennial census, provides, in part, that:

(c) Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner: (1) If there is no change in the number of Representatives, they shall be elected from the districts then prescribed by the law of such State, and if any of them are elected from the State at large they shall continue to be so elected; (2) if there is an increase in the number of Representatives, such additional Representative or Representatives shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; (3) if there is a decrease in the number of Representatives, but the number of districts in such State is equal to such decreased number of Representatives, they shall be elected from the dis-

<sup>27</sup> Ga. Code, Sec. 34-2301; Ga. Laws, 1931, p. 46. This statute resulted from the reduction of Georgia's representation in the House of Representatives from twelve to ten members.

tricts then prescribed by the law of such State; (4) if there is a decrease in the number of Representatives, but the number of districts in such State is less than such number of Representatives, the number of Representatives by which such number of districts is exceeded shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; or (5) if there is a decrease in the number of Representatives and the number of districts in such State exceeds such decreased number of Representatives, they shall be elected from the State at large.

The 1941 Act lists the five varying conditions that may confront a state having congressional districts following a national reapportionment of the House of Representatives. Under four of these conditions the Act requires that until redistricting all or certain of the Representatives of the people of a state shall be elected "from the districts then prescribed by the law of such State." Consequently, the 1941 Act constitutes a congressional confirmation and ratification of state districting acts, including Georgia's 1931 act, in existence at the time of the reapportionment based on the 1940 Census, and also because of the 1941 Act's continuing effect, those in existence at the time of the reapportionments based on the 1950 and 1960 Censuses.<sup>28</sup> Furthermore, it is self-evident that such is the intention of the Congress because it has long shown an affinity for districting whose present posture is mirrored by the House of Representatives.

With this constitutional and statutory background in mind, we turn now to the consideration of the rationale of **Colegrove v. Green**.

<sup>28</sup> Compare *Ohio ex rel. Davis v. Hildebrand* (1916), 241 U. S. 565, 568, 2d par., 60 L. ed. 1172, 1176, r. col., last par., 36 S. Ct. 708.

## 2. The **Colegrove** Rationale.

In **Wood v. Broom**<sup>29</sup> a voter attacked the 1932 Mississippi Congressional Redistricting Statute as violating Article I, Section 4, and the Fourteenth Amendment, of the Federal Constitution and the 1911 Federal Congressional Reapportionment Act.<sup>30</sup> This Court ruled that no federal requirement, directing that congressional districts be composed of contiguous and compact territory and contain as nearly as practicable an equal number of inhabitants, existed where not embodied in the 1929 Federal Congressional Reapportionment Act, and that the provision to that effect in the preceding 1911 Reapportionment Act had reference solely to the districts in which the Representatives were to be elected under the apportionment made by that Act. This Court reversed and remanded the case to the district court with directions to dismiss the complaint. Justices Brandeis, Stone, Roberts and Cardozo concurred in the result, but were of the opinion that the decree should be reversed and the bill dismissed for want of equity, without passing upon the question as to the applicability of the 1911 Reapportionment Act.<sup>31</sup>

The evidence is abundant that **Wood** coincided with congressional intent. The Congress has consistently failed to re-enact the districting requirements of the 1911 Federal Congressional Reapportionment Act or similar ones, irrespective of persistent efforts on the part of some members of the Congress to restore such requirements.<sup>32</sup>

<sup>29</sup> (1932), 287 U. S. 1, 77 L. ed. 131, 53 S. Ct. 1.

<sup>30</sup> *Id.*, 287 U. S. 4, last par., 77 L. ed. 133, 53 S. Ct. 1, col. 1st par.

<sup>31</sup> *Id.*, 287 U. S. 8, last par., 77 L. ed. 135, 53 S. Ct. 1, col. last par.

<sup>32</sup> Notable among these efforts, are those of Representative Emanuel Celler of New York as a member of the House Judiciary Committee.

In **Colegrove v. Green**,<sup>33</sup> this Court was confronted with an action instituted by Illinois voters residing in congressional districts whose populations ranged from 612,000 to 914,000. Twenty other congressional districts had populations that ranged from 112,116 to 385,207 and in seven of these districts the population was below 200,000.<sup>34</sup> The appellants claimed that since they resided in the heavily populated districts their vote was much less effective than the vote of those residing in a district which under the 1901 State Apportionment Act was also allowed to choose one congressman, though its population was sometimes only one-ninth that of the heavily populated districts.<sup>35</sup> The appellants contended that this reduction of the effectiveness of their vote violated Article I and the Fourteenth Amendment of the Federal Constitution.<sup>36</sup>

Justice Frankfurter announced the judgment of the Court in an opinion concurred in by Justices Reed and Burton wherein they opined that dismissal of the complaint was required both by **Wood v. Broom**, supra, holding that there is no federal requirement that congressional districts shall contain as nearly as practicable an equal number of inhabitants and because the complaint suffered from a want of equity.<sup>37</sup>

In commenting on **Wood v. Broom**, Justice Frankfurter stated that:<sup>38</sup>

<sup>33</sup> (1946), 328 U. S. 549, 90 L. ed. 1432, 66 S. Ct. 1198, reh. den. 329 U. S. 825, 91 L. ed. 701, 67 S. Ct. 118, rearg. den. 329 U. S. 828, 91 L. ed. 703, 67 S. Ct. 199.

<sup>34</sup> Id., 328 U. S. 566, last par., 90 L. ed. 1443, 1. col., last par.

<sup>35</sup> Id., 328 U. S. 567, last par., 90 L. ed. 1444, 1. col. We should note here, that in Georgia the most extreme ratio is approximately three to one. Record, p. 39, 2d par., 206 F. Supp. 279, 1. col., 4th par.

<sup>36</sup> Id., 328 U. S. 567, last par., 90 L. ed. 1443, 1. col., last par.

<sup>37</sup> Id., 328 U. S. 551, 2d par., 90 L. ed. 1433, 1. col., last par.

<sup>38</sup> Id.



Nothing has now been adduced to lead us to overrule what this Court found to be the requirements under the Act of 1929, the more so since seven Congressional elections have been held under the Act of 1929 as construed by this Court. No manifestation has been shown by Congress even to question the correctness of that which seemed compelling to this Court in enforcing the will of Congress in **Wood v. Broom**.

But we also agree with the four justices (Brandeis, Stone, Roberts, and Cardozo, JJ.) who were of opinion that the bill in **Wood v. Broom**, supra, should be "dismissed for want of equity."

Justice Frankfurter further stated that:<sup>39</sup>

We are of opinion that the petitioners ask of this Court what is beyond its competence to grant. This is one of those demands on judicial power which cannot be met by verbal fencing about "jurisdiction." It must be resolved by considerations on the basis of which this Court, from time to time, has refused to intervene in controversies. It has refused to do so because due regard for the effective working of our government revealed this issue to be of a peculiarly political nature and therefore not meet for judicial determination.

Of<sup>40</sup> course no court can affirmatively re-map the Illinois districts so as to bring them more in conformity with the standards of fairness for a representative system. At best we could only declare the existing electoral system invalid. The result would be to leave Illinois undistricted and to bring into operation, if the Illinois legislature chose not to act, the choice of members for the House of Representatives

<sup>39</sup> Id., 328 U. S. 552, 2d par., 90 L. ed. 1433, r. col., last par.

<sup>40</sup> Id., 328 U. S. 553, 1st par., 90 L. ed. 1434, l. col., last par.

on a state-wide ticket. The last stage may be worse than the first. The upshot of judicial action may defeat the vital political principle which led Congress, more than a hundred years ago, to require districting. This requirement, in the language of Chancellor Kent, "was recommended by the wisdom and justice of giving, as far as possible, to the local subdivisions of the people of each state, a due influence in the choice of representatives, so as not to leave the aggregate minority of the people in a state, though approaching perhaps to a majority, to be wholly over-powered by the combined action of the numerical majority, without any voice whatever in the national councils."

<sup>1</sup> Kent, Commentaries, 12th ed., 1873, 230-231, note (c). Assuming acquiescence on the part of the authorities of Illinois in the selection of its Representatives by a mode that defies the direction of Congress for selection by districts, the House of Representatives may not acquiesce. In the exercise of its power to judge the qualifications of its own members, the House may reject a delegation of Representatives-at-large.

The<sup>41</sup> petitioners urge with great zeal that the conditions of which they complain are grave evils and offend public morality. The Constitution of the United States gives ample power to provide against these evils. But due regard for the Constitution as a viable system precludes judicial correction. Authority for dealing with such problems resides elsewhere. Article I, § 4 of the Constitution provides that "The Times, Places and Manner of holding Elections for Representatives, shall be prescribed in each State by the Legislature thereof: but the Congress may at any time by Law make or alter such Regulations." The short of it is that the Constitution has conferred

<sup>41</sup> Id., 328 U. S. 554, 2d par., 90 L. ed. 1434, r. col., last par.

upon Congress exclusive authority to secure fair representation by the States in the popular House and left to that House determination whether States have fulfilled their responsibility. If Congress failed in exercising its powers, whereby standards of fairness are offended, the remedy ultimately lies with the people. Whether Congress faithfully discharges its duty or not, the subject has been committed to the exclusive control of Congress. An aspect of government from which the judiciary, in view of what is involved, has been excluded by the clear intention of the Constitution cannot be entered by the federal courts because Congress may have been in default in exacting from States obedience to its mandate.

The one stark fact that emerges from a study of the history of Congressional apportionment is its embroilment in politics, in the sense of party contests and party interests. The Constitution enjoins upon Congress the duty of apportioning Representatives "among the several States . . . according to their respective Numbers. . . ." Article 1, § 2. Yet, Congress has at times been heedless of this command and not apportioned according to the requirements of the Census. It never occurred to anyone that this Court could issue mandamus to compel Congress to perform its mandatory duty to apportion. "What might not be done directly by mandamus, could not be attained indirectly by injunction." . . . Throughout our history, whatever may have been the controlling Apportionment Act, the most glaring disparities have prevailed as to the contours and the population of districts.

To<sup>42</sup> sustain this action would cut very deep into the very being of Congress. Courts ought not to enter this political thicket. The remedy for unfairness

<sup>42</sup> *Id.* 328 U. S. 556, 2d par., 90 L. ed. 1436, 1 col., 2d par.

in districting is to secure State legislatures that will apportion properly, or to invoke the ample powers of Congress. The Constitution has many commands that are not enforceable by courts because they clearly fall outside the conditions and purposes that circumscribe judicial action. . . . The Constitution has left the performance of many duties in our governmental scheme to depend on the fidelity of the executive and legislative action and, ultimately, on the vigilance of the people in exercising their political rights.

Justice Rutledge concurred in the judgment because he believed the Court should exercise its discretion to dismiss for want of equity, on several grounds: that to grant relief would involve the Court in delicate relations with the Congress and the States; that the date (June 10, 1946) was so late as to make redistricting unlikely before the election; and that the election of Representatives on a state-at-large basis would be undesirable.<sup>43</sup>

Justice Black, dissenting in an opinion joined by Justices Douglas and Murphy, opined that the district court had jurisdiction, that a justiciable question was presented, that the appellants had standing to sue,<sup>44</sup> that the population disparities among the districts violated Article I and the Equal Protection Clause,<sup>45</sup> and that, hence relief should be afforded. The dissent was clearly predicated upon the assumption that there was no likelihood that Illinois would afford relief to the appellants because the state legislature was apportioned in such a manner that the state legislators had an interest in perpetuating the complained of congressional districting, and, furthermore, because a series of suits previously instituted in the state

<sup>43</sup> Id., 328 U. S. 565, 4th par., 90 L. ed. 1442, r. col., 4th par.

<sup>44</sup> Id., 328 U. S. 568, 90 L. ed. 1444, l. col.

<sup>45</sup> Id., 328 U. S. 570, 90 L. ed. 1445, l. col., 2d par.



courts challenging the validity of such districting had proved ineffective.<sup>46</sup> Such an assumption is unwarranted in this case because of the probability that the reconstituted Georgia legislature will afford the relief sought by the Appellants. This aspect is treated later in this division of the Brief.

As did their counterparts in **Colegrove**, the Appellants in this case seek the election of Representatives on a state-at-large basis pending redistricting by the state legislature according to population. Obviously, statewide electioneering would be calculated to appeal to the compact majority residing in the easily accessible urban areas and hence would result in the neglect of the substantial minority residing in the rural areas. Even the advocates of federal requirements for congressional districting disapprove the election of Representatives on a state-at-large basis. For instance, Representative Celler in a hearing before his House Committee on the Judiciary stated that:<sup>47</sup>

I have eliminated the idea of drawing district lines here in Washington as impracticable. In view of the requirement of compactness, such elements as economic and social interests of an area, its topography and geography, means of transportation, the desires of the inhabitants as well as of their elected representatives, and finally the political factors should all be considered. Thus I believe State legislature to be far better equipped to determine and evaluate those factors than either the Congress or any national agency it might designate to do so. I look with disfavor upon compelling Representatives to run at large

<sup>46</sup> Id., 328 U. S. 567, 1st par., 90 L. ed. 1443, r. col., 1st par.

<sup>47</sup> Hearing on June 24, 1959, before Subcommittee No. 2 of the Committee on the Judiciary, House of Representatives, 86th Congress, 1st session, on House Resolutions 73, 575, 8266 and 8473.

as a means of enforcement; in fact, one of the very purposes behind my bill is to eliminate once and for all Congressmen at large.

The **Colegrove** rationale has in effect been reaffirmed by this Court through the citation of **Colegrove** as authority in the following cases which avoided intervention in political matters: **Radford v. Gary** (1957), 352 U. S. 991, 1 L. ed. 2d 540, 77 S. Ct. 559; **Kidd v. McCaless** (1956), 352 U. S. 920, 1 L. ed. 2d 157, 77 S. Ct. 223; **South v. Peters** (1950), 339 U. S. 276, 94 L. ed. 834, 70 S. Ct. 461, and **MacDougall v. Green** (1948), 335 U. S. 281, 93 L. ed. 3, 69 S. Ct. 7.

In **Gomillion v. Lightfoot**,<sup>48</sup> decided on November 14, 1960, the plaintiffs, Negroes, attacked the constitutionality of a state statute redefining the boundaries of the City of Tuskegee. The plaintiffs contended that enforcement of the statute, which altered the shape of the city from a square to a twenty-eight-sided figure and removed from the city all save a few Negro voters, but no white voters, constituted a discrimination against them in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment and denied them the right to vote in defiance of the Fifteenth Amendment. This Court, speaking through Justice Frankfurter, held that assuming the truth of plaintiffs' allegations, the statute was invalid because violating the Fifteenth Amendment, which forbids a state from passing any law depriving a citizen of his vote because of his race.

The Court in distinguishing **Colegrove** stated that:<sup>49</sup>

The respondents find another barrier to the trial of this case in **Colegrove v. Green**, 328 U. S. 549, 90

<sup>48</sup> (1960). 364 U. S. 339, 5 L. ed. 2d 110, 81 S. Ct. 125.

<sup>49</sup> Id., 364 U. S. 346, 1st par., 5 L. ed. 2d 116, 1. col., 2d par.

L. ed. 1432, 66 S. Ct. 1198. In that case the Court passed on an Illinois law governing the arrangement of congressional districts within that State. The complaint rested upon the disparity of population between the different districts which rendered the effectiveness of each individual's vote in some districts far less than in others. This disparity came to pass solely through shifts in population between 1901, when Illinois organized its congressional districts, and 1946, when the complaint was lodged. During this entire period elections were held under the districting scheme devised in 1901. The Court affirmed the dismissal of the complaint on the ground that it presented a subject not meet for adjudication. The decisive facts in this case, which at this stage must be taken as proved, are wholly different from the considerations found controlling in **Colegrove**.

That case involved a complaint of discriminatory apportionment of congressional districts. The appellants in **Colegrove** complained only of a dilution of the strength of their votes as a result of legislative inaction over a course of many years. The petitioners here complain that affirmative legislative action deprives them of their votes and the consequent advantages that the ballot affords. When a legislature thus singles out a readily isolated segment of a racial minority for special discriminatory treatment, it violates the Fifteenth Amendment. In no case involving unequal weight in voting distribution that has come before the Court did the decision sanction a differentiation on racial lines whereby approval was given to unequivocal withdrawal of the vote solely from colored citizens. Apart from all else, these considerations lift this controversy out of the so-called "political" arena and into the conventional sphere of constitutional litigation.

While in form this is merely an act redefining metes and bounds, if the allegations are established, the inescapable human effect of this essay in geometry and geography is to despoil colored citizens, and only colored citizens, of their theretofore enjoyed voting rights. That was not **Colegrove v. Green**.

Implicit within this careful distinction between **Colegrove** and **Gomillion** is the obvious desire to preserve **Colegrove**.

We now turn our attention to **Baker v. Carr**,<sup>50</sup> the apparent inspiration for this litigation and the case most heavily relied upon by the Appellants. The complaint in **Baker** alleged that because of population shifts and the failure of the Tennessee legislature to reapportion as required by the State Constitution, the 1901 State Apportionment Act had become obsolete, and denied the plaintiffs equal protection of the laws as guaranteed by the Fourteenth Amendment. In an opinion by Justice Brennan, expressing the views of six members of this Court, it was held that the district court possessed jurisdiction of the subject matter; that a justiciable cause of action was stated upon which the plaintiffs would be entitled to appropriate relief; and that the plaintiffs had standing to challenge the 1901 State Apportionment Act.<sup>51</sup>

This Court in **Baker** elaborately distinguished between the "political question" cases and those appropriate for adjudication, thereby clearly maintaining the vitality of **Colegrove** within the political sphere. The majority opinion defined the contours of the "political question" cases in the following unmistakable terms.<sup>52</sup>

<sup>50</sup> (1962), 369 U. S. 186, 7 L. ed. 2d 663, 82 S. Ct. 691.

<sup>51</sup> *Id.*, 369 U. S. 197, last par., 7 L. ed. 674, 1. col., last par.

<sup>52</sup> *Id.*, 369 U. S. 210, 2d par., 7 L. ed. 2d 681, 1. col., 2d par.



Our discussion, even at the price of extending this opinion, requires review of a number of political question cases, in order to expose the attributes of the doctrine—attributes which, in various settings, diverge, combine, appear, and disappear in seeming disorderliness. Since that review is undertaken solely to demonstrate that neither singly nor collectively do these cases support a conclusion that this apportionment case is nonjusticiable, we of course do not explore their implications in other contexts. That review reveals that in the 'Guaranty Clause cases and in the other "political question" cases, it is the relationship between the judiciary and the coordinate branches of the Federal Government, and not the federal judiciary's relationship to the States, which gives rise to the "political question."

We have said that "in determining whether a question falls within (the political question) category, the appropriateness under our system of government of attributing finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination are dominant considerations." **Coleman v. Miller**, 307 U. S. 433, 454, 455, 83 L. ed. 1385, 1396, 1397, 59 S. Ct. 972, 122 A. L. R. 695. The nonjusticiability of a political question is primarily a function of the separation of powers. Much confusion results from the capacity of the "political question" label to obscure the need for case-by-case inquiry. Deciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise, in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution.

It<sup>53</sup> is apparent that several formulations which vary slightly according to the settings in which the questions arise may describe a political question, although each has one or more elements which identify it as essentially a function of the separation of powers. Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

We<sup>54</sup> come, finally, to the ultimate inquiry whether our precedents as to what constitutes a nonjusticiable "political question" bring the case before us under the umbrella of that doctrine. A natural beginning is to note whether any of the common characteristics which we have been able to identify and label descriptively are present. We find none: The question here is the consistency of state action with the Federal Constitution. We have no question decided, or to be decided, by a political branch of government coequal with this Court. Nor do we risk embarrassment of our government abroad, or grave disturbance at home if we take issue with Tennessee as to the

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<sup>53</sup> Id., 369 U. S. 217, 2d par., 7 L. ed. 2d 685, r. col., 2d par.

<sup>54</sup> Id., 369 U. S. 226, 2d par., 7 L. ed. 2d 691, l. col., 2d par.

constitutionality of her action here challenged. Nor need the appellants, in order to succeed in this action, ask the Court to enter upon policy determinations for which judicially manageable standards are lacking (Emphasis supplied).

These attributes are synonymous with those present in **Colegrove** and in this case. The "political question" doctrine is characterized by the interrelationships of the federal courts to the other two branches of the Federal Government, and not the relationship of such courts to the States. The delicate questions involved in these separation of powers contexts were not present in **Baker**, which only involved the federal courts and a state and the well settled criteria developed under the Equal Protection Clause.

The Constitution has clearly conferred upon Congress the exclusive authority and responsibility to secure fair representation by the States in the popular House and left to that House the determination of whether states have fulfilled their responsibility. If a state selects its Representatives by a mode that defies the direction of Congress for selection by districts, the House, in the exercise of its power to judge the qualifications of its own members, may reject the delegation of Representatives.

In **Wood**, **Colegrove** and **Baker**, this Court has clearly announced its judgment that claims of the nature here presented are not appropriate for adjudication.

## B. THE ABSTENTION DOCTRINE.

### 1. Georgia's New Political Climate.

The impact of **Baker v. Carr** has created a dramatic transformation in the political life of Georgia.

On April 28, 1962, a three-judge district court<sup>55</sup> held in **Sanders v. Gray**<sup>56</sup> that Georgia's county-unit method of tabulating the vote cast in party primaries for the nomination of candidates for the Governorship and other statewide offices was unconstitutional by virtue of the severe dilution of the urban vote. Consequently, on September 12, 1962, a Democratic candidate was nominated for the office of Governor in a primary where all votes were tabulated equally. This candidate was elected Governor by the people of Georgia in the General Election held on November 6, 1962, and he now holds such office. It is a matter of common knowledge in Georgia that the Governor exercises great influence upon the activity of the General Assembly of Georgia.

On May 25, 1962, a three-judge district court<sup>57</sup> held in **Toombs v. Fortson**<sup>58</sup> that the General Assembly of Georgia, composed of a Senate and House of Representatives, was unconstitutionally constituted in that neither House thereof was apportioned according to population. The court further held that the General Assembly must be reconstituted so that at least one House thereof will have been reapportioned according to population prior to the convening of the General Assembly in January, 1963.<sup>59</sup> The court concluded by stating that:<sup>60</sup>

<sup>55</sup> Composed of Circuit Judges Tuttle and Bell and District Judge Hooper.

<sup>56</sup> (D. C. N. D.-1962), 203 F. Supp. 158.

<sup>57</sup> Composed of Circuit Judges Tuttle and Bell and District Judge Morgan, the same three judges composing the lower court in this case.

<sup>58</sup> (D. C. N. D.-1962), 205 F. Supp. 248.

<sup>59</sup> The General Assembly convenes in regular session on the second Monday in January of each year. Par. III; Sec. IV, Art. III, Ga. Const.; Ga. Code Ann., Sec. 2-1603.

<sup>60</sup> 205 F. Supp. 258, r. col., last par.



Giving full consideration to all of these factors,<sup>61</sup> and recognizing the right of the plaintiffs to have their constitutional rights vindicated at the earliest practicable moment, while at the same time according every presumption of good faith to, and affording a reasonable opportunity to act to, the responsible State officials and the present General Assembly now that the rights of the parties have been declared, we have concluded that we should enter no injunction at this time. We have concluded that we should postpone any further proceedings in this matter until the State has had a reasonable opportunity to reconstitute the Legislature so as to meet the constitutional standards here laid down prior to the January, 1963, session. If it appears that the Legislature has taken such action as brings the composition of the General Assembly within such constitutional standards, then this Court need take no further action. If, on the other hand, the Legislature does not act, or if its action does not meet constitutional standards, then we will be under a clear duty to take such action as is necessary and feasible to accord plaintiffs their rights.

On September 14, 1962, the Governor of Georgia issued his Proclamation<sup>62</sup> convening the General Assembly in extraordinary session on September 27, 1962, for the purpose *inter alia*, of considering and enacting laws relating to the reapportionment of the Senate within the requirements of

<sup>61</sup> See 205 F. Supp. 258, 1. col., (7). These factors converged in the determination that it would be feasible for the General Assembly to convene in extraordinary session, after the conclusion of the state primaries in September, 1962 but prior to the holding of the General Election on November 6, 1962, for the purpose of reapportioning itself to conform to the criteria prescribed by the court.

<sup>62</sup> Ga. Laws, Sept.-Oct. 1962, Extra Sess., pp. 3-5. A copy of the Proclamation is set forth in Appendix A, pp. 47-48, to the Appellees' Motion to Affirm or Dismiss With Supporting Brief.

**Toombs v. Fortson.** This convening of the extraordinary session immediately followed the conclusion of the state primary process in September for the nomination of party candidates for the public offices filled in the General Election held on November 6, 1962.

Upon convening, the General Assembly expeditiously went about the business of considering the reconstitution of the Senate, which culminated on October 5, 1962, in the enactment into law of Act No. 1<sup>63</sup> apportioning the membership of the Senate entirely on a population basis as required by **Toombs v. Fortson**. Thereafter, special senatorial primaries were held for the nomination of party candidates for membership in the reconstituted Senate, and at the General Election held on November 6, 1962, senators were elected by the people to represent the newly defined senatorial districts.

It is interesting to note that Appellant Wesberry was elected as the Senator to represent the 37th Senatorial District, and that it is a matter of common knowledge that during his campaign he promised that "if elected he will promptly introduce a bill to reapportion the 5th Congressional District in a way that will give Fulton County its own congressional seat."<sup>64</sup> He has not previously been elected to membership in the General Assembly.

The membership of the House of Representatives of the General Assembly is apportioned, after each federal census, among Georgia's 159 counties as follows: "To the eight counties having the largest population, three representatives each; to the thirty counties having the next largest

<sup>63</sup> Ga. Laws, Sept.-Oct. 1962, Extra. Sess., pp. 7-31. A copy of the Act is set forth in Appendix B, pp. 49-75, to the Appellees' Motion to Affirm or Dismiss With Supporting Brief.

<sup>64</sup> *The Atlanta Journal*, Thursday, Oct. 11, 1962, p. 17, 3d col., 2d par.

population, two representatives each; and to the remaining counties, one representative each.”<sup>65</sup> Consequently, the House is composed of 205 Representatives, 84 of whom represent the 38 most populous counties. While the House is apportioned largely according to geography, it is nevertheless clear that the urban areas possess a powerful voice in the House.

On January 14, 1963, the General Assembly of Georgia convened in regular session with its Senate apportioned according to population. During this session, Appellant Wesberry introduced Senate Bill No. 101 for the redistricting of Georgia's congressional districts, but due to the gravity of the measure coupled with insufficient time for appropriate study, the Bill did not pass at that session, but was referred to the Rules Committee of the Senate where it is still pending for further action. Next, Senator Julian Webb introduced Senate Resolution No. 56, for the creation of a joint Senate-House committee to study congressional redistricting, which was passed by the Senate, but was reported unfavorably in the House. However, this did not end “all attempts at reapportionment at that session of the General Assembly” as stated by the Appellants in their Brief (p. 7, last par.), because Senator Webb then introduced Senate Resolution No. 129 for the authorization of an interim Senate committee to study congressional redistricting and to report its recommendations and studies to the 1964 regular session of the General Assembly. This Resolution was adopted on March 15, 1963,<sup>66</sup> the day the General Assembly adjourned sine die.

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<sup>65</sup> Sec. III, Art. III, Ga. Const.; Ga. Code Ann., Ch. 2-15. The membership of the House of Representatives elected for the 1963-64 term and to be elected for subsequent terms has been reapportioned on the basis of the 1960 federal census. Ga. Laws, 1961, p. 111; Ga. Code, Sec. 47-101.

<sup>66</sup> A certified copy of Senate Resolution No. 129 has been lodged with the Clerk of this Court.

In July 1963, the Joint Congressional Redistricting Study Committee was created by the President of the Senate appointing ten Senators, one from each congressional district, and the Speaker of the House appointing ten Representatives, one from each congressional district.<sup>67</sup> Senator Julian Webb was made Chairman of this Committee. It is a matter of common knowledge that the Committee is in good faith pursuing its task of studying congressional redistricting for the purpose of recommending to the 1964 regular session of the General Assembly a fair and equitable plan for reducing the population variations among the congressional districts. Furthermore, the Governor has announced publicly that he will support any fair and equitable redistricting plan.<sup>68</sup>

It is interesting to note, that Appellant Wesberry admitted in his statement of September 17, 1963, filed with

<sup>67</sup> This Committee was created pursuant to Senate Resolution No. 78 and House Resolution No. 274, both adopted March 15, 1963, certified copies of which have been lodged with the Clerk of this Court.

<sup>68</sup> Judicial notice may be taken of matters of common knowledge relating to political affairs and legislative matters. *Hamilton v. Regents of the University of California* (1934), 293 U. S. 245, 259, last par., 79 L. ed. 343, 351, 1. col., 2d par., 55 S. Ct. 197, reh. den., 293 U. S. 633, 79 L. ed. 717, 55 S. Ct. 345; *Meredith v. Fair* (C. A.-5th-1962), 298 F. 2d 696, 701 (1), cert. den., 371 U. S. 828, 9 L. ed. 2d 66, 83 S. Ct. 49; *Malone Freight Lines v. Tuttle* (C. A.-5th-1949), 177 F. 2d 901, 903, r. col., 1st par.; *Savannah River Electric Co. v. Federal Power Commission* (C. C. A.-4th-1947), 164 F. 2d 408, 410, 1. col., last par.; *United States v. Harnecke* (C. C. A.-7th-1943), 138 F. 2d 561, 565, 1. col., last par., cert. den., 321 U. S. 771, 88 L. ed. 1066, 64 S. Ct. 529, reh. den., 321 U. S. 803, 88 L. ed. 1089, 64 S. Ct. 635; *Greeson v. Imperial Irr. Dist.* (C. C. A.-9th-1932), 59 F. 2d 529, 531, 1. col., 1st par.; *Bok v. McCaughn* (C. C. A.-3d-1930), 42 F. 2d 616, 618, r. col., 1st par.; *National Maritime Union of America v. Herzog* (D. C.-D. C.-1948), 78 F. Supp. 146, 167 (39), aff'd, 334 U. S. 854, 92 L. ed. 1776, 68 S. Ct. 1529; *Elmore v. Rice* (D. C.-E. D. S.-C.-1947), 72 F. Supp. 516, 519 (2), aff'd, 165 F. 2d 387, cert. den., 333 U. S. 875, 92 L. ed. 1151, 68 S. Ct. 905; *United States v. Rosini* (D. C.-E. D. N. Y.-1943), 52 F. Supp. 816, 819 (4); *Town of O'Keene, Okla., ex rel. Byrgard v. Katz* (D. C.-W. D. Okla.-1942), 45 F. Supp. 629, 633 (6).



the Joint Congressional Redistricting Study Committee, that "I made it clear that I did not think that Senate Bill 101 should be passed as introduced, but that it should undoubtedly be drastically changed to meet with the approval of all citizens of Georgia" and that "I believe it includes some good suggestions and I know it includes some bad ones." (Statement, p. 3, 1st par.)<sup>69</sup>

These factors compellingly illustrate the likelihood, recognized by the lower court,<sup>70</sup> that the relief sought by Appellants will be afforded by the reconstituted General Assembly. This likelihood is further intensified by the work of the Joint Congressional Redistricting Study Committee. It may reasonably anticipate the cooperation of the Governor, the Senate, and a substantial representation in the House, in securing fair and equitable congressional redistricting.

## 2. Federal-State Relations.

The determination which the Appellants would have this Court make lies in an extremely sensitive area involving the relationship of the powers of the National Government to those of the States. Here, of all places, the federal courts should act cautiously and with great circumspection and should avoid any action where relief may be furnished by the State. This philosophy of comity governing federal-state relations has been applied by this Court in myriad of contexts.

In **Great Lakes Dredge & Dock Company v. Huffman**,<sup>71</sup> the petitioners instituted in federal court a declaratory judgment action seeking to have a state law as applied to them and their employees declared unconstitutional. The

<sup>69</sup> A certified copy of this statement has been lodged with the Clerk of this Court.

<sup>70</sup> Record, p. 45, 3d par., 206 F. Supp. 282, r. col. (7).

<sup>71</sup> (1943), 319 U. S. 293, 87 L. ed. 1407, 63 S. Ct. 1070.

action was dismissed and on appeal to this Court the judgment was affirmed in a unanimous opinion stating in part that:<sup>72</sup>

This Court has recognized that the federal courts, in the exercise of the sound discretion which has traditionally guided courts of equity in granting or withholding the extraordinary relief which they may afford, will not ordinarily restrain state officers from collecting state taxes where state law affords an adequate remedy to the taxpayer. **Matthews v. Rodgers**, 284 U. S. 521, 76 L. ed. 447, 52 S. Ct. 217. This withholding of extraordinary relief by courts having authority to give it is not a denial of the jurisdiction which Congress has conferred on the federal courts, or of the settled rule that the measure of inadequacy of the plaintiff's legal remedy is the legal remedy afforded by the federal not the state courts. **Stratton v. St. Louis Southwestern R. Co.**, 284 U. S. 530, 533, 534, 76 L. ed. 465, 468, 469, 52 S. Ct. 222; **Di Giovanni v. Camden F. Ins. Asso.**, 296 U. S. 64, 69, 80 L. ed. 47, 51, 56 S. Ct. 1. On the contrary, it is but a recognition that the jurisdiction conferred on the federal courts embraces suits in equity as well as at law, and that a federal court of equity, which may in an appropriate case refuse to give its special protection to private rights when the exercise of its jurisdiction would be prejudicial to the public interest (**United States ex rel. Greathouse v. Dern**, 289 U. S. 352, 359, 360, 77 L. ed. 1250, 1254, 1255, 53 S. Ct. 614; **Virginian R. Co. v. System Federation**, R. E. D., 300 U. S. 515, 549-553, 81 L. ed. 789, 800, 802, 57 S. Ct. 592), should stay its hand in the public interest when it reasonably appears that private interests will not suffer. See **Pennsylvania v. Williams**, 294 U. S. 176, 185, 79 L. ed.

<sup>72</sup> *Id.*, 319 U. S. 297, last par., 87 L. ed. 1410, r. col., last par.

841, 847, 53 S. Ct. 380, 96 A. L. R. 1166, and cases cited.

It is in the public interest that federal courts of equity should exercise their discretionary power to grant or withhold relief so as to avoid needless obstruction of the domestic policy of the states.

"The scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts, and a proper reluctance to interfere by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted federal right may be preserved without it. Whenever the question has been presented, this Court has uniformly held that the mere illegality or unconstitutionality of a state or municipal tax is not in itself a ground for equitable relief in the courts of the United States. If the remedy at law is plain, adequate, and complete, the aggrieved party is left to that remedy in the state courts, from which the cause may be brought to this Court for review if any federal question be involved." **Matthews v. Rodgers**, *supra* (284 U. S. 525, 526, 76 L. ed. 451, 452, 52 S. Ct. 217).

The<sup>73</sup> statutory authority to render declaratory judgments permits federal courts by a new form of procedure to exercise the jurisdiction to decide cases or controversies, both at law and in equity, which the Judiciary Acts had already conferred. **Aetna L. Ins. Co. v. Haworth**, 200 U. S. 227, 81 L. ed. 617, 57 S. Ct. 461, 108 A. L. R. 1000. Thus the Federal Declaratory Judgments Act (Act of June 14, 1934, 48 Stat. 955, c.

<sup>73</sup> *Id.*, 319 U. S. 209, last par., 87 L. ed. 1412, 1. col., 2d par. As to this aspect of the opinion, see also: *Public Affairs Press v. Rickover* (1962), 369 U. S. 111, 112, 2d par., 7 L. ed. 2d 606, 82 S. Ct. 582; and *Eccles v. Peoples Bank*, (1948), 333 U. S. 426, 431, 2d par., 92 L. ed. 784, 789, 1. col., 2d par., 68 S. Ct. 641, reh. den. (1948), 333 U. S. 877, 92 L. ed. 1153, 68 S. Ct. 900.

512, as amended, 28 U. S. C. A., § 400, 8 F. C. A., title 28, § 400), provides in § 1 that a declaration of rights may be awarded although no further relief be asked and in § 2 that "further relief based on a declaratory judgment or decree may be granted whenever necessary or proper."

The jurisdiction of the district court in the present suit, praying an adjudication of rights in anticipation of their threatened infringement, is analogous to the equity jurisdiction in suits quia timet or for a decree quieting title. See **Nashville, C. & St. L. R. Co. v. Wallace**, 288 U. S. 249, 263, 77 L. ed. 730, 735, 53 S. Ct. 345, 87 A. L. R. 1191. Called upon to adjudicate what is essentially an equitable cause of action, the district court was as free as in any other suit in equity to grant or withhold the relief prayed, upon equitable grounds. The Declaratory Judgments Act was not devised to deprive courts of their equity powers or of their freedom to withhold relief upon established equitable principles. It only provided a new form of procedure for the adjudication of rights in conformity to those principles. The Senate committee report on the bill pointed out that this Court could, in the exercise of its equity power, make rules governing the declaratory judgment procedure. S. Rep. No. 1005, 73rd Cong., 2d Sess., p. 6. And the House report declared that "large discretion is conferred upon the courts as to whether or not they will administer justice by this procedure." H. R. Rep. No. 1264, 73rd Cong., 2d Sess., p. 2; and see **Brillhart v. Excess Ins. Co.**, 316 U. S. 491, 494, 86 L. ed. 1620, 1624, 62 S. Ct. 1173; **Borchard, Declaratory Judgments**, 2d ed., p. 312.

**Martin v. Creasy**<sup>74</sup> involved an action instituted in federal court by owners of property abutting a section of

<sup>74</sup> (1959), 360 U. S. 219, 3 L. ed. 2d 1186, 79 S. Ct. 1034.



highway which, under authority of a Pennsylvania statute, was to be designated as a "limited access highway," to which owners of abutting property had no right of ingress or egress except as may be provided by the authorities responsible for the highway. Claiming that the enforcement of the statute would deprive them of their property without due process of law, since the statute did not provide compensation for loss of access to the highway, the plaintiffs asked for injunctive relief and for a judgment declaring the statute unconstitutional. In equitable proceedings in the state courts it was found that the state statute provided a complete procedure to guard and protect the plaintiffs' constitutional rights at all times. Nevertheless, the district court granted the plaintiffs relief, believing that they might be irreparably harmed during the period required to determine their rights in the state courts.

On appeal, this Court reversed holding in part that:<sup>75</sup>

The circumstances which should impel a federal court to abstain from blocking the exercise by state officials of their appropriate functions are present here in a marked degree. The considerations which support the wisdom of such abstention have been so thoroughly and repeatedly discussed by this Court as to require little elaboration. **Railroad Com. v. Pullman Co.**, 312 U. S. 496, 85 L. ed. 971, 61 S. Ct. 643; **Chicago v. Fieldcrest Dairies**, 316 U. S. 168, 86 L. ed. 1355, 62 S. Ct. 986; **Spector Motor Service, Inc. v. McLaughlin**, 323 U. S. 101, 89 L. ed. 101, 65 S. Ct. 152; **A. F. of L. v. Watson**, 327 U. S. 582, 90 L. ed. 873, 66 S. Ct. 761; **Government Employees v. Windsor**, 353 U. S. 364, 1 L. ed. 2d 894, 77 S. Ct. 838. See also: **Alabama Public Service Com. v. Southern R. Co.**, 341 U. S. 341, 95 L. ed. 1002, 71 S. Ct. 762. Reflected

<sup>75</sup> Id., 360 U. S. 224, 2d par., 3 L. ed. 2d 1189, r. col., last par.

among the concerns which have traditionally counseled a federal court to stay its hand are the desirability of avoiding unseemly conflict between two sovereignties, the unnecessary impairment of state functions, and the premature determination of constitutional questions. All those factors are present here.

For other cases applying the doctrine of equitable abstention, see: **Harrison v. NAACP** (1959), 360 U. S. 167, 176, 2d par., 3 L. ed. 2d 1152, 1158, l. col., 2d par., 79 S. Ct. 1025; **Louisiana Power & Light Co. v. City of Thibodaux** (1959), 360 U. S. 25, 27, 1st par., 3 L. ed. 2d 1058, 1061, l. col., last par., 79 S. Ct. 1070, reh. den. (1959), 360 U. S. 940, 3 L. ed. 2d 1552, 79 S. Ct. 1442; **City of Meridian v. Southern Bell Tel. & Tel. Co.** (1959), 358 U. S. 639, 640, last par., 3 L. ed. 2d 562, 563, r. col., 2d par., 79 S. Ct. 455; **Albertson v. Millard** (1953), 345 U. S. 242, 245, 2d par., 97 L. ed. 983, 985, r. col., 3d par., 73 S. Ct. 600; **Burford v. Sun Oil Co.** (1943), 319 U. S. 315, 317, last par., 87 L. ed. 1424, 1426, l. col., 2d par., 63 S. Ct. 1098, reh. den. (1943), 320 U. S. 214, 87 L. ed. 1851, 63 S. Ct. 1442; **Beal v. Missouri Pacific Railroad Corp.** (1941), 312 U. S. 45, 50, 1st par., 85 L. ed. 577, 580, l. col., 1st par., 61 S. Ct. 418; and **Giovanni v. Camden Fire Insurance Assn.** (1935), 296 U. S. 64, 73, last par., 80 L. ed. 47, 53, r. col., last par., 56 S. Ct. 1. See also Justice Clark's concurring opinion in **Baker v. Carr**, 369 U. S. 258, last par.

These cases reflect a sound and salutary policy derived from our federalism for the purpose of maintaining a balanced and harmonious relationship between federal and state authority. The considerations that prevailed in these cases for avoiding the hazards of serious disruption by federal courts of state government or needless friction between federal and state authority are all the more appropriate in this case where there is a strong likelihood that the issues will be resolved by state legislative action.

Under such circumstances, the lower court did not abuse its discretion in dismissing the Complaint.<sup>76</sup>

### C. CONCLUSION.

Prior to **Baker v. Carr**, the voice of the majority in state government had become largely impaired by virtue of the massive and continuing population shift from rural to urban areas being inadequately reflected in the state legislatures.

**Baker v. Carr** promises judicial relief for the restoration of the majority to its rightful place in the state legislatures. In **Gray v. Sanders**,<sup>77</sup> this Court affirmed the invalidation of the Georgia County unit system which had subdued the majority influence in the politically powerful Democratic primary for the nomination of state officers; and the decision of the district court in **Toombs v. Fortson** resulted in the reapportionment of Georgia's Senate according to population. The restoration of these democratic processes has placed Georgia's political destiny in the hands of the majority, and has robbed the following allegations of the Appellants' Complaint (R.

<sup>76</sup> *Martin v. Creasy* (1959), 360 U. S. 219, 225, 3 L. ed. 2d 1186, 1190, r. col., 79 S. Ct. 1034; *Alabama Pub. Scr. Com. v. Southern Railway Co.* (1951), 341 U. S. 341, 95 L. ed. 1002, 71 S. Ct. 762. "The motions of the appellee that the mandates of these cases provide for retention by the District Court of jurisdiction pending further proceedings are denied" (1951), 341 U. S. 946, 95 L. ed. 1370, 71 S. Ct. 1011; *Burford v. Sun Oil Co.* (1943), 319 U. S. 315, 334, 2d par., 87 L. ed. 1424, 1435, 1. col., 2d par., 63 S. Ct. 1098, reh. den. (1943), 320 U. S. 214, 87 L. ed. 1851, 63 S. Ct. 1442; *Hastings v. Shelby Oil & Gas Co.* (1943), 319 U. S. 348, 87 L. ed. 1443, 63 S. Ct. 1114, reh. den. (1943), 320 U. S. 214, 87 L. ed. 1851, 63 S. Ct. 1442; *Great Lakes Dredge & Dock Co. v. Huffman* (1943), 319 U. S. 293, 301, last par., 87 L. ed. 1407, 1413, 1. col., 2d par., 63 S. Ct. 1070; and *Beal v. Missouri Pacific Railroad Corp.* (1941), 312 U. S. 45, 51, 3d par., 85 L. ed. 577, 580, r. col., 3d par., 61 S. Ct. 418.

<sup>77</sup> (1963), 372 U. S. 368, 9 L. ed. 2d 821, 83 S. Ct. 801.

10, par. XIV) of whatever efficacy they may have previously enjoyed:

To date, all attempts by the informed, civically and militant electorate and an aroused public to have the General Assembly to reapportion the Congressional Election Districts so as to more nearly equalize their population have been without success. A contributing, if not the, cause of this situation is the fact that the State legislature is chosen on the basis of State election subdivisions inequitably apportioned in a way similar to those of the Congressional districts. That the issues of State and Congressional apportionment are thus so interdependent and inter-related that it is to the interest of the State legislature to perpetuate the inequitable apportionment of both State and Congressional Election Districts. Consequently, there are no practical opportunities for the plaintiffs and the people of Georgia for exerting their political weight at the polls. Georgia has no initiative and referendum.

Today, these practical political opportunities exist and are awaiting utilization by "the informed, civically and militant electorate and an aroused public". Nevertheless, the Appellants ignore these conventional remedies and seek relief from this Court, which if granted, would thrust it into an unseemly conflict with the Congress.

Some enthusiasts for court ordered congressional redistricting, including the Appellants (R. 39, 206 F. Sup. 279), urge the creation of districts which do not vary below 85 percent or above 115 percent of the state population norm. Appellees' Exhibit No. 2 (R. 187-200) reveals that only nine states<sup>78</sup> satisfy this criteria, while

<sup>78</sup> Iowa, Maine, Massachusetts, Minnesota, Nebraska, New Hampshire, New York, North Dakota and Rhode Island.



the remaining thirty-three states,<sup>79</sup> having congressional districts, fail to qualify.

The Appellees' Exhibits (R. 79-139) and the findings of the lower court<sup>80</sup> clearly illustrate that the form of congressional districting complained of in Georgia is not exotic, but epitomizes a national practice. Furthermore, the figures in these Exhibits do not tell the whole story because they do not show the gerrymander, a common method of districting in many states. This big picture is significant because any direct change by the Court in this area would trigger the rapid institution of widespread redistricting litigation which would place the very existence of the present membership of the National House of Representatives in jeopardy.

However, in **Baker v. Carr** this Court has set in motion a great engine designed to give the urban areas of the Nation a far greater influence in their state legislatures, an influence which obviously will result in the reshaping of congressional districts according to population. Through this reaction the Appellants will achieve their ends. But, here they seek to catapult this Court into an area constitutionally insulated against judicial interference and involving the most sensitive and delegate relationships with the Congress. In recognition of this, the Court has wisely preserved **Colegrove** and is properly leaving congressional redistricting to reapportioned state legislatures.

These matters involve the internal functioning of a coordinate department, and regard for the separation of

<sup>79</sup> Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Montana, New Jersey, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.

<sup>80</sup> Record, p. 41, 2d par., 206 F. Supp. 280, 1. col., 2d par.

powers, if nothing else, should lead this Court to respect the internal autonomy of the Congress. The traditional deference of this Court for the Congress and the well established principles of equity demand the affirmance of the judgment of the lower court under the circumstances of this case.

## II.

THIS APPEAL SHOULD BE DISMISSED ON THE GROUND THAT THE MATTERS IN CONTROVERSY HAVE BECOME MOOT. IN ANY EVENT, THIS APPEAL SHOULD BE DISMISSED ON THE GROUND THAT THE RELIEF SOUGHT AS TO THE CONGRESSIONAL ELECTION TO BE HELD ON NOVEMBER 3, 1964, IS PREMATURE BECAUSE OF THE LIKELIHOOD THAT THE STATE WILL AFFORD INTERIM RELIEF.

### A. MOOTNESS.

The immediate object of the Complaint in this case was to require congressional redistricting prior to the holding of the General Election on November 6, 1962, or, in the alternative, to require the election of Representatives on a state-at-large basis in the General Election. The Election has now been held and the Representatives of the people of Georgia have been elected for the succeeding two years and, therefore, the immediate controversy between the parties has become moot. There are no acts to restrain at the present time and the other relief sought by the Appellants would have no immediate effect because Georgia's congressional representation has been fixed for the 1963-64 term.

Nevertheless, the Appellants attempt to maintain an active controversy by seeking injunctive and declaratory relief aimed at the General Election to be held on No-

vember 3, 1964, and subsequent elections. However, the seeking of this additional relief does not rescue the appeal from its newly acquired theoretical status because the appeal now only presents an abstract question divorced from any presently existing right or actual controversy. This mootness is further intensified by the probability that the state legislature will afford the relief sought, and the possibility that the Appellants may be ineligible to vote in subsequent general elections through a change in residence or otherwise.<sup>81</sup> What the Appellants really seek at this time is an advisory opinion. Several cases are apposite to illustrate this point.

**United Public Workers v. Mitchell**<sup>82</sup> concerned an action to enjoin the members of the United States Civil Service Commission from enforcing against plaintiffs a certain provision of the Hatch Act, as being repugnant to the Federal Constitution, and for a judgment declaratory of the unconstitutionality of such provision. Certain of the plaintiffs had joined in the institution of the action because they desired to act contrary to the rule against political activity, although they had not violated it.<sup>83</sup> In other words, they merely presented an abstract question. In responding to such abstraction, this Court stated that:<sup>84</sup>

As is well known the federal courts established pursuant to Article III of the Constitution do not render advisory opinions. For adjudication of constitutional issues "concrete legal issues, presented in actual cases, not abstractions," are requisite. This

<sup>81</sup> This possibility is analogous to the possibility that a plaintiff may not be a candidate in future elections. *Michael v. Cockerell* (C. C. A. 4th-1947), 161 F. 2d 163, 164, r. col., 2d par.

<sup>82</sup> (1947), 330 U. S. 75, 91 L. ed. 754, 67 S. Ct. 556.

<sup>83</sup> *Id.*, 330 U. S. 88, 91 L. ed. 766, 1. col.

<sup>84</sup> *Id.*, 330 U. S. 89, 1st par., 91 L. ed. 766, r. col., 2d par.

is as true of declaratory judgments as any other field. These appellants seem clearly to seek advisory opinions upon broad claims of rights protected by the First, Fifth, Ninth and Tenth Amendments to the Constitution. . . .

The power of courts, and ultimately of this Court, to pass upon the constitutionality of acts of Congress arises only when the interests of litigants require the use of this judicial authority for their protection against actual interference. A hypothetical threat is not enough. We can only speculate as to the kinds of political activity the appellants desire to engage in or as to the contents of their proposed public statements or the circumstances of their publication. It would not accord with judicial responsibility to adjudge, in a matter involving constitutionality, between the freedom of the individual and the requirements of public order except when definite rights appear upon the one side and definite prejudicial interferences upon the other.

The Constitution allots the nation's judicial power to the federal courts. Unless these courts respect the limits of that unique authority, they intrude upon powers vested in the legislative or executive branches. Judicial adherence to the doctrine of the separation of powers preserves the courts for the decision of issues, between litigants, capable of effective determination. Judicial exposition upon political proposals is permissible only when necessary to decide definite issues between litigants. When the courts act continually within these constitutionally imposed boundaries of their power, their ability to perform their function as a balance for the people's protection against abuse of power by other branches of government remains unimpaired. Should the courts seek to expand their power so as to bring under their juris-



diction ill-defined controversies over constitutional issues, they would become the organ of political theories. Such abuse of judicial power would properly meet rebuke and restriction from other branches. By these mutual checks and balances by and between the branches of government, democracy undertakes to preserve the liberties of the people from excessive concentrations of authority. No threat of interference by the Commission with rights of these appellants appears beyond that implied by the existence of the law and the regulations. **Watson v. Buck**, *supra* (313 U. S. p. 400, 85 L. ed. 1423, 61 S. Ct. 962, 136 A. L. R. 1426). We should not take judicial cognizance of the situation presented on the part of the appellants considered in this subdivision of the opinion. These reasons lead us to conclude that the determination of the trial court, that the individual appellants, other than Poole, could maintain this action, was erroneous.

In **Communist Party v. Subversive Activities Control Board**,<sup>85</sup> this Court again recognized that "Merely potential impairment of constitutional rights under a statute does not of itself create a justiciable controversy in which the nature and extent of those rights may be litigated."<sup>86</sup>

**Richardson v. McChesney**<sup>87</sup> concerned a writ of error to review a state court decree refusing to require a state official, when certifying the names of nominees for Congress to the clerks of the various county courts, to proceed under the State Congressional Apportionment Act of 1882, rather than under the State Apportionment Act of 1890.

<sup>85</sup> (1961), 367 U. S. 1, 6 L. ed. 2d 625, 81 S. Ct. 1357. See also *International Longshoremen's and Warehousemen's Union v. Boyd* (1954), 347 U. S. 222, 223, last par., 98 L. ed. 650, 652, 1 col., last par., 74 S. Ct. 447.

<sup>86</sup> 367 U. S. 71, 2d par., 6 L. ed. 2d 674, 1 col., last par.

<sup>87</sup> (1910), 218 U. S. 487, 54 L. ed. 1121, 31 S. Ct. 43.

The appellant contended that the 1890 Act was invalid because it failed to conform to federal congressional reapportionment acts requiring that congressional districts be of contiguous territory containing as nearly as practicable an equal number of inhabitants.

Without considering the merits, this Court dismissed the writ of error, stating in part that:<sup>88</sup>

The matter which the defendant McChesney, as secretary of the commonwealth of Kentucky, is to be prohibited from doing, relates solely to an election to be held in November, 1908, and the thing which he is to be required to do relates only to the same election. The election to be affected by a decree, according to the prayer of the bill, has long since been held, and the members of Congress were, in November, 1908, elected under the apportionment act of 1890. They were, as we may judicially know, admitted to the respective seats, and, as we may also take notice, their successors have been elected according to the same scheme of apportionment. The thing sought to be prevented has been done, and cannot be undone by any judicial action. Under such circumstances there is nothing but a moot case. **Mills v. Green**, 159 U. S. 651, 40 L. ed. 293, 16 Sup. Ct. Rep. 132; **Jones v. Montague**, 194 U. S. 147, 48 L. ed. 913, 24 Sup. Ct. Rep. 611.

The duty of the court is limited to the decision of actual pending controversies, and it should not pronounce judgment upon abstract questions; however such opinion might influence future action in like circumstances.

This dismissal is significant because the appellant had alleged that the 1890 Act violated the requirements of the federal congressional reapportionment acts and, hence, the

<sup>88</sup> Id., 218 U. S. 492, 3d par., 54 L. ed. 1122, 1. col., last par.

alleged violation would recur at each election of Representatives so long as the acts remained in force. Nevertheless, this Court determined the issue to be moot.

The decision in **Mills v. Green**,<sup>89</sup> relied upon in **Richardson**, stated in part that:<sup>90</sup>

The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions; or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal.

In **Fortson v. Cook**<sup>91</sup> and **Turman v. Duckworth**,<sup>92</sup> the appellants sought declaratory and injunctive relief aimed at the invalidation of Georgia's county unit system for tabulating votes in party primaries. This Court in dismissing the appeals cited **United States v. Anchor Coal Company**<sup>93</sup> as authority for dismissal on the ground of mootness, irrespective of the obvious application of the county unit system to future primaries.<sup>94</sup>

<sup>89</sup> (1895), 159 U. S. 651, 40 L. ed. 293, 16 S. Ct. 132.

<sup>90</sup> Id., 159 U. S. 653, last par., 40 L. ed. 293, r. col., last par.

<sup>91</sup> (1946), 329 U. S. 673, 91 L. ed. 596, 67 S. Ct. 21, reh. den. (1946), 329 U. S. 829, 91 L. ed. 703, 67 S. Ct. 296.

<sup>92</sup> Id.

<sup>93</sup> (1929), 279 U. S. 812, 73 L. ed. 971, 49 S. Ct. 262.

<sup>94</sup> This point was touched upon by Justice Rutledge in his opinion. See 329 U. S. 677, 2d para. 91 L. ed. 597, r. col., last par.

In **Hume v. Mahan**,<sup>95</sup> the district court held a Kentucky congressional redistricting act void for want of a good-faith effort to comply with federal statutory requirements of practical equality of population and compact territory. On appeal, this Court in a *per curiam* opinion held "Decree reversed and cause remanded with directions to dismiss the bill of complaint".<sup>96</sup> Since that case was not brought to the Court until after the election had been held, the Court cited not only **Wood v. Broom**,<sup>97</sup> but also directed dismissal for mootness, citing **Brownlow v. Schwartz**.<sup>98</sup>

In view of these authorities, it is clear that this appeal no longer presents a controversy susceptible of judicial determination.

#### B. PREMATURETY AS TO THE 1964 CONGRESSIONAL ELECTION.

In **Remmey v. Smith**,<sup>99</sup> the plaintiffs sought to have the Pennsylvania Apportionment Act of 1921 declared unconstitutional and to compel the state legislature to reapportion state representative and senatorial districts. The three-judge district court held that the suit was premature and dismissed for want of equity. In its opinion, the court stated in part that:<sup>100</sup>

The determination which the plaintiffs would have us make lies in that extremely sensitive field, the relation of the powers of the National Government to those of the States. Here, of all places, a federal court

<sup>95</sup> (D. C.-E. D. Ky.-1932), 1 F. Supp. 142, 149, r. col., 1st par.

<sup>96</sup> 287 U. S. 575, 77 L. ed. 505, 53 S. Ct. 223.

<sup>97</sup> 287 U. S. 1, 77 L. ed. 131, 53 S. Ct. 1.

<sup>98</sup> 261 U. S. 216, 67 L. ed. 620, 43 S. Ct. 263. See also comment on that case in *Baker v. Carr*, at 369 U. S. 202, 1st par., 7 L. ed. 2d 676, r. col., 1st par.

<sup>99</sup> (D. C.-E. D. Pa.-1951), 102 F. Supp. 708.

<sup>100</sup> *Id.*, 102 F. Supp. 711, 1. col., 2d par.



should tread warily and with great circumspection and should forego any action where relief may be furnished by the State. This court should not intervene where an apparent, but untried, remedy may lie in the Courts of the Commonwealth of Pennsylvania. Those Courts may declare the present operation of the Apportionment Act of 1921 to be unconstitutional under the Pennsylvania Constitution. **More**

over, and this we deem to be a most cogent circumstance, the 1951 General Assembly of the Commonwealth of Pennsylvania is in session. This is the first General Assembly convened following the United States decennial census of 1950. The 1951 General Assembly has the opportunity to act in respect to this most important matter and, if it does, may pass a reapportionment act which will meet every constitutional requirement. Under these circumstances action by this court at this time would, at best, be premature. (Emphasis supplied.)

Upon appeal this Court entered a *per curiam* opinion stating in part that "The motion to dismiss is granted and the appeal is dismissed for the want of a substantial Federal question."<sup>101</sup>

The dismissal granted by this Court in **Remmey** is even more appropriate in this case because it involves congressional redistricting in contrast with state legislative reapportionment, and, furthermore, because there is a stronger likelihood in this case that the state legislature will afford the relief sought by the Appellants. Hence, this appeal should be dismissed on the ground that the relief sought by the Appellants as to the congressional election to be held on November 3, 1964, is premature.

<sup>101</sup> *Remmey v. Smith* (1952), 342 U. S. 916, 96 L. ed. 685, 72 S. Ct. 368. See also comment on that case in *Baker v. Carr*, at 369 U. S. 235, 1st par., 7 L. ed. 2d 696, 1 col.

### CONCLUSION.

The Judgment of the United States District Court for the Northern District of Georgia, sought to be reviewed in this cause, should be affirmed; or, in the alternative, the appeal in this cause should be dismissed, (a) on the ground that the matters in controversy in this action and upon this appeal have become abstract and moot by virtue of the holding of the General Election on November 6, 1962, and the election therein of the Representatives of the people of Georgia in the House of Representatives of the Congress of the United States, or (b) on the ground that the relief sought as to the congressional election to be held on November 3, 1964, is premature because of the likelihood that the State of Georgia will afford interim relief.

Respectfully submitted,

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